

BOARD OF ZONING APPEAL FOR THE
CITY OF CAMBRIDGE GENERAL HEARING

January 8, 2009 7:00 P.M.

Senior Center

806 Massachusetts Avenue

Cambridge, Massachusetts 02139

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Constantine Alexander, Vice Chair

Tim Hughes, Member

Thomas Scott, Member

Tad Heuer, Member

Doug Meyer, Member

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P R O C E E D I N G S

(7:00 P.M.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Tad Heuer, Tim Hughes.)

BRENDAN SULLIVAN: The Board will hear case No. 9724, 32 Bradbury Street.

Reintroduce yourself, please, for the record. Please spell it for the recorder.

ARTHUR HORIATIS: Arthur Horiatis, H-o-r-i-a-t-i-s.

STEVE HORIATIS: I'm Steve Horiatis, brother.

BRENDAN SULLIVAN: Okay. Since last we met, there was -- well, when we first met, there was some concerns, I think, about setback, pushing it back in the groove, maybe making it a little less dense. And what was the bottom line that you -- you might just have to speak up

just a little bit.

ARTHUR HORIATIS: Yep. What we did was we took the Board's sort of suggestions and went back to the drawing board and we pushed the dormer back -- well, we took the Board's suggestions and then we created a plan given what the Board had suggested. And then we went out to neighbors. We sent out a letter to all of the neighbors, and then we also contacted the abutters and met with all of the abutters. The abutters behind us did not want three-six. They wanted six-six as a setback from the rear. So we pushed the dormer as far back as possible leaving a six-six setback on the back of the house. The dormers itself is -- we decreased the size from the 30 or so feet to 20 feet, 6 inches which is what's there now. So we're keeping the existing size that's there. The only difference is we're changing the shape of it so it

conforms with a more historical look of what, you know, what may have been there at some point, but it conforms with the neighborhood and that's what we're trying to achieve.

We have supported from -- Conservation has given us their certificate that they support the design. We have support from the rear abutters and also the side abutters as well. I think also -- that's --

STEVE HORIATIS: Yeah, that's pretty much it.

CONSTANTINE ALEXANDER: I didn't see it in the file, or maybe I missed it, a new dimensional form. Does the old dimensional form still apply?

STEVE HORIATIS: I have it right there.

CONSTANTINE ALEXANDER: Was this in the file or you just brought it with you tonight?

STEVE HORIATIS: It was given.

TAD HEUER: When I looked at that, is this the one that has the condition of 1559; is that correct? Can you just explain the total gross floor area? The first time you had listed 1922, and now it's listed 1559. Can you explain how that happened? I can't imagine you lost gross floor area.

STEVE HORIATIS: Yeah, 1559. We're 1801 now. Last time we were here we were at 1970.

TAD HEUER: Can you just help me out and explain how you lost the existing condition floor area between then and now?

STEVE HORIATIS: We didn't lose the existing condition. It's still 1559.

TAD HEUER: So, what's the 1922 that's crossed out?

STEVE HORIATIS: The 1970? That was what we were requesting.

TAD HEUER: No. Right there

there's a number crossed out in the existing condition, 1922.

STEVE HORIATIS: No, that was a mistake when I first filled out the application form back then.

TAD HEUER: Okay.

STEVE HORIATIS: I just did it in red so it would stand out in the corrections on it.

TAD HEUER: I understand.

CONSTANTINE ALEXANDER: Tad, can I see that when you're done?

TAD HEUER: Yes. I have other questions.

CONSTANTINE ALEXANDER: When you're done, yes.

TAD HEUER: On the length of the dormers, you said it's 26 and on the plans they show 21, 6.

STEVE HORIATIS: That's with the overhang. The walls are 26 and then it has a six-inch overhang on each side of

it.

TAD HEUER: Right.

And then on the plans you show a 32-foot height.

STEVE HORIATIS: We corrected that to 31 feet and we're keeping it at 31 feet. The 32 was suggested maximum height from Historical.

TAD HEUER: Okay.

STEVE HORIATIS: And I just put that as maximum height, but it got confusing so I corrected that, so it's at 31 feet. I corrected those two.

TAD HEUER: On the plan?

STEVE HORIATIS: Yeah. On the proposed.

TAD HEUER: Yes. The plan that I was looking at when I was looking at the plan yesterday, but maybe other --

ARTHUR HORIATIS: That was changed.

STEVE HORIATIS: That was changed

because there was some confusion. So I came down so it wouldn't be confusing, today.

TAD HEUER: Today?

STEVE HORIATIS: Yeah.

CONSTANTINE ALEXANDER: To what extent? You changed the plan -- I looked at the file yesterday. I looked at this old plan --

STEVE HORIATIS: The only thing is Historical just told us that we cannot max out passed 32 feet. And I wrote it down, I wrote it down that way, but people were getting confused thinking that we were going to build at 32 feet, which our intentions are not. We're going to stay at 31 feet. That's why I just wanted to make sure we were clear.

CONSTANTINE ALEXANDER: And that's the only change you made?

STEVE HORIATIS: Exactly.

TAD HEUER: And you've also

removed the second story deck element in the back; is that right?

STEVE HORIATIS: Right. That's gone.

TAD HEUER: And is it correct that the left elevation dormer has no windows?

STEVE HORIATIS: Yes. It's abutting the neighbor's house.

TAD HEUER: Yes.

STEVE HORIATIS: So we're not looking into their house and vice versa. It's just one solid wall there. And that's what's there pretty much right now is a solid wall. And then when it goes up with an A-frame, there's a small row of windows.

TAD HEUER: Okay.

CONSTANTINE ALEXANDER: And you need zoning relief because of setback requirements? Why are you before us?

STEVE HORIATIS: Because as soon as we touch that roof, we have to -- it's

a non-conforming lot --

CONSTANTINE ALEXANDER: Right.

STEVE HORIATIS: That's the reason why we're here.

CONSTANTINE ALEXANDER: You're still -- you're within the permitted FAR.

ARTHUR HORIATIS: Well within it.

STEVE HORIATIS: Yes.

CONSTANTINE ALEXANDER: I don't see any -- yeah. Okay.

BRENDAN SULLIVAN: Tom, do you have any questions?

THOMAS SCOTT: No, I think it looks good.

TAD HEUER: The one question I did have is Tom's question from last time is about topping the ridge line and bringing the massing up all the way up the front from the street. The building on your left has a setback. Have a --

STEVE HORIATIS: But we're pushing that dormer now.

TAD HEUER: The dormer you were.
But the front of the house seems to be
popped up on its current front lot, its
current front wall, correct?

ARTHUR HORIATIS: Yes.

STEVE HORIATIS: This right here.

TAD HEUER: Yes.

STEVE HORIATIS: We have this
small little bump out here that's going to
help break that.

TAD HEUER: Okay.

STEVE HORIATIS: And that's
protruding a foot so we'll break it going
upwards.

ARTHUR HORIATIS: Otherwise it's
just the same wall.

STEVE HORIATIS: It's a straight
wall.

TAD HEUER: Okay.

STEVE HORIATIS: Like a bay
window. Because we didn't want us looking
at a huge big wall.

TAD HEUER: Okay.

BRENDAN SULLIVAN: So the reason you're here is because the existing house is non-conforming now because of a left-side setback; is that correct?

STEVE HORIATIS: Correct.

BRENDAN SULLIVAN: And that is really it, is that --

ARTHUR HORIATIS: Oh, and the vestibule.

STEVE HORIATIS: Oh, yes, we had the vestibule going on, but I don't think -- I think -- I don't know the footage on that. The vestibule that we're building. Since we're building on the property since that house is so close to the neighbor's house, that's why we're on the left side is the issue.

BRENDAN SULLIVAN: Yes, okay. Other than that everything is conforming?

STEVE HORIATIS: Yeah.

BRENDAN SULLIVAN: Okay.

TAD HEUER: Can you explain Historical -- we have a letter in the file from Historical dated the 15th referencing the plans of November and we have plans of December 14th. So could you just tell us what these plans reflect vis-a-vis Historical's comments?

ARTHUR HORIATIS: The -- all right. Are you talking about the letter from Charlie Sullivan or are you talking about the certificate of appropriateness?

CONSTANTINE ALEXANDER:
Certificate of appropriateness.

TAD HEUER: The certificate dated the 15th. December 15th, 2008.

ARTHUR HORIATIS: Which would be?

TAD HEUER: Which references plans dated November 24th.

CONSTANTINE ALEXANDER: That's it.

ARTHUR HORIATIS: Yeah.

CONSTANTINE ALEXANDER: Yes.

ARTHUR HORIATIS: Right. What we

did was -- the plans that we -- we went to the meeting -- well, they were the original, the October meeting we went to, and they gave us -- they granted us, you know, certain things. And then we went back after we met with this Board, and the plans that we brought to them, the roof --

STEVE HORIATIS: The pitch was --

ARTHUR HORIATIS: The pitch was --

STEVE HORIATIS: -- a little bit steeper and they wanted us to -- for me to make it a little more gentle and that's what we did. We corrected those.

ARTHUR HORIATIS: And they gave us the room -- the reason why we got this 32 thing confused is they told us they wanted to keep it 32 feet and under, but they gave us the latitude to make that change and then that would resubmit the new plans to them.

STEVE HORIATIS: Which is those right there.

BRENDAN SULLIVAN: Okay. So these plans reflect basically the correspondence with them that you corrected it?

Those correspondence from the Half Crown-Marsh Neighborhood Conservation District and the certificate to amend the previously issued certificate dated October 28th to incorporate the following changes:

Reduce the length of the proposed shed dormer to 20 foot, six inches with the option of the applicant to reposition the dormers closer to the front of the house, if required, to reduce the shadow impact -- shadow impacts on neighboring properties with the review and approval of a revised elevation drawing delegated to staff. Add a second story to the entrance vestibule on the right elevation.

Approval is granted on the condition that the roof pitch of the main house closely match the roof pitch of the house

at 34 Bradbury Street, and that the overall height of the building not exceed 32 feet.

Approval also comes with a strong recommendation that should the existing tree on the southeast corner of the lot need to be removed due to construction of the approved vestibule, the applicant plant a new tree in the same general location. And except as amended upon the original certificate it remains in full effect. And it's signed -- I'm not sure, Jim Vansickle, dated 12/15/08.

There's also additional correspondence from Elizabeth Delaney 52-54 Foster Street who approves the revised plan, and also from Matthew Curtis who is an abutter I believe. He's right behind you?

ARTHUR HORIATIS: Rear abutter.

BRENDAN SULLIVAN: And he also is expressing support. Okay.

Tim, any questions at all?

TIM HUGHES: No.

STEVE HORIATIS: I do if I just --
I'll just add it in, I think the two rear neighbors are more important. I did have Maryellen, who lives to the right, and then the Burkes, who live to the left, they reviewed plans, not the plans, with the six-six, but, you know, similar plans and they're in full support. They actually came to the Historical meeting and they were in full support.

BRENDAN SULLIVAN: Okay.

Tom, any questions?

THOMAS SCOTT: No.

BRENDAN SULLIVAN: Gus?

CONSTANTINE ALEXANDER: No.

BRENDAN SULLIVAN: Tad?

TAD HEUER: Even though it's an extension of our former guidelines, that you've taken all these considerations to effect, you're removing what I think

everyone agrees is an unsightly single dormer currently on the building, I would make that exception.

BRENDAN SULLIVAN: Okay.

I make a motion to grant the relief requested as per the plan submitted dated -- this is December 33. So that didn't happen. Dated 12/14/08, and initialed by the Chair.

The Board finds a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner.

The Board finds that the hardship is owing to the fact that the existing house is non-conforming and that any work improvement, fair and reasonable of this particular application, would require some relief from this Board.

The Board finds that even though the proposed dormer does exceed the guidelines, that the petitioner has worked

with the neighborhood and also with the Half Crown Conservation District to come up with a plan which is far more suitable and much more desirable than the existing structure.

The Board finds that desirable relief may be granted without substantial detriment to the public good, and relief may be granted without it nullifying or substantially derogating from the intent and purpose of the ordinance.

All those in favor of granting the relief requested?

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.
(Sullivan, Alexander, Scott, Heuer, Hughes.)

BRENDAN SULLIVAN: Okay. Thank you.

(Whereupon, a discussion was
held off the record.)

(7:15 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Mahmood
Firouzbakht, Tad Heuer, Doug Meyer.)

BRENDAN SULLIVAN: The Board will
hear case No. 9713, 227-229 Rindge Avenue.

If you would please reintroduce
yourself for the record. Please spell
your last name and whoever is going to
speak and whenever you speak.

BOBBY RILEY: Sure. My name is
Bobby Riley. My residence is 227 Rindge
Avenue. And I thank you again for the
continuation and the opportunity to be
here today. And sorry about the hat, I
had bad dermatology work, so I have a
bunch of weird shavings on my head.

BRENDAN SULLIVAN: That's okay.

BOBBY RILEY: And I guess the
intent and the reason we're here is to
move into a home that has been in the
family for a few generations of my wife,
and converted back to a two-family

property, add a two-story addition to the unit. And so all the feedback we think we addressed in a straight forward manner coming into, coming into this meeting, we cut off over 700 square feet for the addition. And, you know, basically brought down the two liveable spaces to approximately 1200 square feet.

I also have my architect Eric Army here as well to kind of speak on the specifics of the floor to area ratio reductions if that's okay.

ERIC ARMY: Thanks. Last name is A-r-m-y.

Again, I also want to thank you for your input last time. Because one of the intents of this project is to really be part of the community not just as a family as Bobby stated, but also a piece of architecture.

So we significantly reduced the square footage from last time, as Bobby

stated, a little over 700 square feet that was removed. We removed a -- one of the bathrooms, that breezeway area that we talked about last time. And also after speaking with the -- in confirmation from the building official, we were able to use one exterior stairs under the Mass. Residential Building Code as long as the landings are covered. So that enabled us to reduce the square footage and the two bedroom units that are one bath. They're about 1200 square feet. So we feel that this is the minimal square footage in amenities we can do to sort of accommodate sort of the two-family home which is what the zoning would allow.

BOBBY RILEY: I'd also like to add that we're able to share with the neighbors, all the surrounding neighbors, our plans and our parking situation, to introduce us as new neighbors and also to find support, which actually 360 degrees

around the house we were able to get signatures and support from our neighbors. So I included that in the package that you should have received. And I also have an original copy here.

CONSTANTINE ALEXANDER: So I can be sure -- we can be precise about exactly what relief you're seeking.

BOBBY RILEY: Uh-huh.

CONSTANTINE ALEXANDER: You did reduce the size, as you say, by about 700 square feet. But you're still, you're at 2428 square feet. And the max under the zoning code is 2019.

BOBBY RILEY: That's correct.

CONSTANTINE ALEXANDER: You're still about 20 percent over what is permitted under zoning code. Your FAR is .5 district. You're now at .6. Before you were .79. So again, you're 20 percent roughly over your admitted FAR. You still have a parking issue. You don't have two

parking spaces within the meaning of our zoning code. You have tandem parking --

BOBBY RILEY: That's correct.

CONSTANTINE ALEXANDER: -- and that doesn't work. So that's a third form of relief. You have a right side setback issue.

BOBBY RILEY: Correct.

CONSTANTINE ALEXANDER: Again, you're supposed to be seven and a half feet, if my notes are correct. You're going from six and quarter feet to 4.88 feet.

BOBBY RILEY: Right.

CONSTANTINE ALEXANDER: So you're ultimately close to that.

ERIC ARMY: And on that one, I would ask that the geometry of the site be considered a mitigating circumstance. The site is not actually parallel to the building. It's more of a parallelogram into the -- it actually angles back.

CONSTANTINE ALEXANDER: And on the plus side you're now in compliance with usable open space.

ERIC ARMY: Correct.

CONSTANTINE ALEXANDER: Which were not on the original plans.

ERIC ARMY: Which we feel was important to you guys.

CONSTANTINE ALEXANDER: That's why you're here before us?

ERIC ARMY: That is accurate.

TAD HEUER: This is the same question I had for the previous applicant. On the metro form, your existing conditions here say 1932, and when I looked at that existing conditions, it said 1785 I believe. Can you explain how the existing conditions change?

ERIC ARMY: Yes. The existing conditions are physically the same. As we went back over this again, we -- I took a second look at the measurements and I

found that there's more architecture than there would be the second time.

TAD HEUER: So you found there's not 200 or 115 square feet?

ERIC ARMY: Right. We made sure that we -- any porch, and I guess any porch that was enclosed, even if it's not heated, but it's enclosed -- if it's enclosed, that also counts against the FAR. So I wanted to make sure that we were straight on that.

TAD HEUER: Okay.

ERIC ARMY: As you can see, I know you're perusing the drawings, the actual how far deep into the yard. And so the volume of it -- there is currently a one-story section on the back which you can see in the photographs. And so we don't go any further back than the building already goes. The one-story section, we're increasing it to two stories. And then it's 150 square feet of

new footprint that's going to have two stories constructed on that.

MAHMOOD FIROUZBAKHT: I'm sorry, so are you saying the footprint will change?

ERIC ARMY: The only -- we're not going any further back into the yard than the existing building already goes.

MAHMOOD FIROUZBAKHT: Yes.

ERIC ARMY: You can see -- you should be able to see there's a one-story addition that if you're looking at the C1.0 sheet, that should be your -- show your best reference for this. There's a one-story addition in the back that's going to have a second story added on top of that.

MAHMOOD FIROUZBAKHT: I'm not sure I have the latest plans.

BOBBY RILEY: This is it.

ERIC ARMY: And the darker hatch. That's the only area that we're adding

more footprint of the building.

MAHMOOD FIROUZBAKHT: So the footprint of the building will increase by that checkered area?

ERIC ARMY: Right.

MAHMOOD FIROUZBAKHT: Gotcha.

ERIC ARMY: As opposed to before we were extending further back into the area.

MAHMOOD FIROUZBAKHT: Whereas before there was the breezeway and then it was going to go all the way back. I got you.

CONSTANTINE ALEXANDER: How does the parking work now? You have to back out onto Rindge Street to get out of the parking space?

BOBBY RILEY: It's tandem now. So you're either backing in or backing out. I guess whatever opportunity --

BRENDAN SULLIVAN: The answer is yes in answer to your question.

ERIC ARMY: In general we've noticed most of the -- whenever there's been one or two cars there, they usually just back into the driveway so that when you're leaving, you go forward. I understand that's not technically compliant, but it's just that --

CONSTANTINE ALEXANDER: The only question I raise is that when there's a two-family house, the amount of parking -- use of the parking facilities on the lot is going to increase and it's not ideal in terms of leaving and entering that property. Because Rindge Street, there's no parking on the street. So -- where will people park? You'll plan to park one in front of the other on the lot?

BOBBY RILEY: Yeah, that's the way it currently operates now.

CONSTANTINE ALEXANDER: You have two cars now?

BOBBY RILEY: There's two cars on

the lot.

CONSTANTINE ALEXANDER: So it's a one-family house. And the family -- your family has two cars?

MRS. RILEY: We have one car, yes. Sorry.

BOBBY RILEY: No, I'm just referring to Rick's car and your mom's car. There would be one car per family.

MRS. RILEY: Oh, okay.

MAHMOOD FIROUZBAKHT: What's happening with the back deck? It looks like there was an existing back deck.

ERIC ARMY: Well, we plan to sort of revise the deck plan on the -- actually, here, take a look at it. The deck plan is going to be revised to incorporate the second stair from the second floor. Second means of egress.

MAHMOOD FIROUZBAKHT: So the deck, the current deck will --

ERIC ARMY: It's in a similar --

it's a similar sizing location, but it's probably going to need to be rebuilt just because of the heights and incorporating the stair.

BRENDAN SULLIVAN: Now, why does the stairway go up to the -- well, all the way up? Is that a proposed deck on that flat roof?

ERIC ARMY: That's something that could potentially be incorporated. Dealing with a flat roof, we definitely want to be able to get up there to clear snow off, etcetera.

CONSTANTINE ALEXANDER: Is there a railing around that?

BRENDAN SULLIVAN: No.

ERIC ARMY: And that's something that if it could become a deck, then it would be a foot railing.

CONSTANTINE ALEXANDER: Well, we would have a problem with the Zoning Board if that became a deck.

BRENDAN SULLIVAN: Yes, it doesn't come automatically.

CONSTANTINE ALEXANDER: Yes.

BRENDAN SULLIVAN: I don't know. I know you've reduced whatever. I guess my problem with it is the amount of massing, you know. That there was an existing one-story addition there. I would have less of a problem -- can I see the pictures? If that were sort of -- I would have less of a problem if that was sort of filled out and squared off than I do with going up two stories. I just -- that was my initial impression -- the original building proposal was way too much massing. And this I still think has too much massing for the area for the lot. You know, again, the circular staircase, it's, it's just -- it's very imposing. I'm having a tough time finding anything I like about it to be honest with you.

BOBBY RILEY: We're willing to

lose any kind of circular -- I think -- we're concerned about the massing as well. We just want to find a way to have two bedrooms per floor.

BRENDAN SULLIVAN: It's in-filling, you know, a backyard which is not really meant to be in-filled. The width of the lot is 40 feet at the front and, you know, 40 feet at the back. That's -- it's just filling in that whole, you know. I go down Montgomery Street and I look and I -- a number of times going to Cambridge Lumber and I just envision a structure where now you have sort of open space, you know, in between the house. You go down Montgomery. You go down to before -- between the first house on Rindge Avenue and the second house and there's open space. You know, I can see the one-story addition. You can see the pool and all that other stuff. And all of a sudden you're going to look at a mass of

a structure there. And I just don't think it fits. I mean know that's what you need there.

BOBBY RILEY: I mean, maybe we have another --

BRENDAN SULLIVAN: And I think that the stairway is just sort of pushing it over the top again as far as being just too imposing.

ERIC ARMY: Well, I appreciate your input and perspective on that. I would just state just sort of that the neighbors that are the abutters there, they were okay with that. So we just wanted to state that was the opinion of the neighbors.

MAHMOOD FIROUZBAKHT: So what neighbors in particular are you referring to?

BOBBY RILEY: The two to the right and left to the front of the house. The two on the side of each house and in the

back as well.

ERIC ARMY: So that would be a total of six abutters.

BOBBY RILEY: And they were owners as well.

MAHMOOD FIROUZBAKHT: You covered every single owner around your property?

BOBBY RILEY: That's correct.

MAHMOOD FIROUZBAKHT: And we have letters from them?

BOBBY RILEY: Yeah, I have a signed document here. And anything else they -- they said that we would need, they would be willing to come to meetings or anything for us. They were -- their support was good.

CONSTANTINE ALEXANDER: Can you give me a sense of the layout of the inside? That drives the massing that Mr. Sullivan is referring to. Why do you need as much -- what are your plans?

ERIC ARMY: Yes, I got that right

here. Basically, you come up the, the existing front stair is in this location to be --

CONSTANTINE ALEXANDER: This is on Rindge Avenue now, right?

ERIC ARMY: On Rindge Avenue, yep. This is the second floor you're looking at.

You come up the stair. You have a kitchen. Actually, it's an eat-in kitchen, so there's not a separate dining room. It's just an eat-in kitchen of 17 by 17 when you count -- it actually includes the circulation space as well. You have a reasonably well sized living room. A small storage space. Bathroom with a tub, and then two bedrooms as well as then circulation so you have a second means of egress.

CONSTANTINE ALEXANDER: This second floor is going to be your mother-in-law's unit?

BOBBY RILEY: The second floor is planned to be my wife and I's unit.

CONSTANTINE ALEXANDER: Oh, I'm sorry.

BOBBY RILEY: And the first floor is going to be my mother-in-law's unit.

CONSTANTINE ALEXANDER: And the first floor has got basically the same --

ERIC ARMY: It's the same layout except the second stairs that come up to the unit.

MAHMOOD FIROUZBAKHT: Mr. Chair, do you mind if I take a look at the new plans?

ERIC ARMY: So as we went through, we tried to massage out whatever we could to keep the massing down. That's the reason we went with the exterior stairs because we wanted to reduce whatever massing we could from the actual.

MAHMOOD FIROUZBAKHT: I mean, I'd say from what we saw the first time, this

is a huge, huge improvement. And I certainly understand, you know, the concern about massing, particularly in this type neighborhood. But it seems, it seems -- I mean, it seems okay to me. Especially given the fact that usable open space now is being conformed with -- and there is a considerable amount of open space in the back of the lot where you would have most of the, I guess, effect of the additional massing. So in that way they sort of, you know, go -- they go hand in hand well where the usable open space is in relation to where you're adding building. I think you've done a nice job. And I don't think it's a significant addition. So, I'm okay with what's being proposed.

BRENDAN SULLIVAN: Gus, what are your thoughts?

CONSTANTINE ALEXANDER: I'm at a quandary to be honest with you. I echo

Mahmood's remarks. You made a real good effort on your revised plans. I think this is a far better project than we saw the last time. And I am sympathetic to keeping families in Cambridge and this is a tight neighborhood. There is a lot of massing though. I don't know how you can reduce the massing. I wish we could figure that out. So I'm a little bit still on the fence. So I have to think about it. I'm not sure how I'm going to be on this.

BRENDAN SULLIVAN: Doug?

DOUG MEYER: I have a question about the plans and I'm wondering --

BRENDAN SULLIVAN: Do we have another set? We had three sets. Two here and one there. Is that possible?

ERIC ARMY: Yes, I've got a second copy.

DOUG MEYER: My question concerns this circular staircase structure as it's

depicted on these various plans particularly, and yet I have trouble visualizing it on this general site plan.

ERIC ARMY: Yeah.

DOUG MEYER: Where the back or rear wall seems uniform. And my question is, it does intrude into this open space here. It's not depicted there.

ERIC ARMY: There would be a deck there, but there would not be a full foundation or enclosed architecture in that location.

CONSTANTINE ALEXANDER: So the protrusion doesn't count against the open space is your point?

ERIC ARMY: That's correct.

CONSTANTINE ALEXANDER: There's something sitting in there but it doesn't count.

ERIC ARMY: Right. And that would be the location to answer your question.

DOUG MEYER: Okay.

BRENDAN SULLIVAN: Anything else?

DOUG MEYER: No.

BRENDAN SULLIVAN: Tad, your thoughts?

TAD HEUER: All right. I agree with everything that's been said pretty much on both sides. I think last time it was essentially putting a second house on the lot that was designed for one house, and I think that's why we had the reaction against the original plan. And coming back here you pushed, you know, most of the structure back in towards the main structure, which again, leads to the concern about massing. And in that respect I'm still looking at this as a small worker's type cottage that's on a lot and area, I think the Chairman mentioned it last time, it's one of these areas of Cambridge that this is poor zoning to avoid in-filling into lots that are very narrow to -- point out the

parallelogram size of the lot, pushing against the lot line and some corners and not in others. It means that it's not ideal to begin with.

I mean, I think I'm in a similar position as Gus. I'm fine on the setback. I mean, I perfectly understand the issues with the size of the lot. I'm fine on the setback issue. I guess my concern is essentially building a box up and out where no such box exists now and that it starts intruding visually as you're trying to make your way visually down the street a little bit. The building's going with the street scape as a whole. You've got this room structure in the back. So I'm still troubled by that because even though it's a significant improvement than before, it does bump your .46 to .48 to very close to the .5 that the zoning code says this district should in to a .6. So while I'm sympathetic to the fact that

you've knocked a lot off and you've done a great job in doing so, I'm still wondering if I saw this for the first time and it was .48 to a .6, whether I would say sure, go ahead.

BOBBY RILEY: Can I also share this with you as well? This is another mock-up just visually.

ERIC ARMY: As we were running through different iterations, this came up.

BOBBY RILEY: And just understanding that very point, you know, you made as well, it's just the way it sits in with other homes.

TAD HEUER: This is the proposed we had before?

CONSTANTINE ALEXANDER: Oh, the first proposal.

BOBBY RILEY: This is just another option visually that may be more in line. I mean, we're willing to do anything

possible.

BRENDAN SULLIVAN: This is their revised that is on the table now. But their --

ERIC ARMY: Right. We had an option that we had gone through as we were looking at what would accomplish the goals of this better.

TAD HEUER: And what does this do in terms of your FAR?

ERIC ARMY: It's the exact same floor plan. And so when we were looking at this, to our eye, the flat roof actually still sort of retained the original shape of the existing house so that we weren't creating sort of a false history to the house. And there was actually less space. That was, you know, it keeps the mansard, so it keeps it unified, and it's -- to our eye it's a difference of opinion.

MAHMOOD FIROUZBAKHT: So it's the

same concept but the roof line is extended from --

ERIC ARMY: The same floor plan. It's just a different roof on the same building.

MAHMOOD FIROUZBAKHT: A pitched roof line extended back.

ERIC ARMY: Exactly.

MAHMOOD FIROUZBAKHT: I think it looks better.

CONSTANTINE ALEXANDER: I agree.

BRENDAN SULLIVAN: I think one of the problems is the house having a mansard roof is imposing in itself on Rindge Avenue as opposed to gable or any other kind of -- so the house itself -- I don't know where those pictures are. They're circulating around here someplace. The house itself is somewhat imposing, but that's it. I mean, that's -- we're not going to change that.

BOBBY RILEY: I don't know if you

remember this photo either, but this is just a hand sketch with the monster back addition from last time. But if you can help envision just the home.

BRENDAN SULLIVAN: So you know they're all marching along on the sidewalk anyway. And with the idea, I guess, of kids playing in the backyard is more desirable than most. Whatever. So the house itself is somewhat imposing. So in the first go-around, to put another imposing structure on the back just didn't work for us.

MAHMOOD FIROUZBAKHT: So the main, I guess, view of the back of the house from Rindge Ave. would be what we were -- what we're looking at here?

BRENDAN SULLIVAN: Originally well, what we said was that.

ERIC ARMY: That's from the Rindge Ave. The rendering is the Rindge Avenue facade with the larger addition in the

back. So what you're seeing would be half as deep.

BRENDAN SULLIVAN: So I guess that -- I still find it imposing, but I found this not very tasteful. Not to be critique. But, you know, it's just that it's imposing and not very attractive. That tends to be in the heading in the right direction. But it's still massing but it's heading in the right direction aesthetically.

DOUG MEYER: May I ask a question?

ERIC ARMY: Sure.

DOUG MEYER: And you don't have to answer this question. And if you don't answer, it won't affect my thinking at all. But obviously the Board is having some difficulties here. And do you think you would be able to make further revisions in the plan along the line of reducing the dimensions in mass at the rear portion of the building if -- since a

step in that direction, I think, would clearly resolve whatever difficulties the Board is having now?

ERIC ARMY: Looking at the floor plan with my five to ten years of architectural experience, the most we could take out, one foot, maybe a foot and a half before the floor plan starts to become untenable basically.

MAHMOOD FIROUZBAKHT: How big are the bedrooms as proposed?

ERIC ARMY: The bedrooms are 11-by-12 right now.

MAHMOOD FIROUZBAKHT: That's small. I certainly, I like the sentiment of trying to come up with the revised plans so that they get approval. But I think reducing the floor plan would just -- I mean, what would be the point?

CONSTANTINE ALEXANDER: I feel the same way. I think the massing is the massing is the massing. I think you live

with it or not. I don't think you can reconfigure the size of the house to reduce the massing. You either live with it or you don't or we do as a Board.

ERIC ARMY: Right. And there is no walk-in closet. There is no separate dining area.

BRENDAN SULLIVAN: And these doors go to, is this a --

ERIC ARMY: The back porch.

BRENDAN SULLIVAN: So this is a deck here?

ERIC ARMY: Uh-huh.

BRENDAN SULLIVAN: Off the back?

ERIC ARMY: Uh-huh.

BRENDAN SULLIVAN: Has that been calculated in?

ERIC ARMY: That doesn't count against the FAR.

TAD HEUER: That one.

BRENDAN SULLIVAN: This one here does not. This one here will.

MAHMOOD FIROUZBAKHT: Because it's covered?

BRENDAN SULLIVAN: Because it's covering this one, yes.

ERIC ARMY: It's my understanding that it needed to be enclosed as well as covered.

CONSTANTINE ALEXANDER: No, no.

BRENDAN SULLIVAN: No. It's basically that if you have an enclosure over so that the second floor one creates FAR to the first one basically.

MAHMOOD FIROUZBAKHT: So you didn't calculate the first floor deck in your FAR calculations, the square footage?

ERIC ARMY: That was not considered, no.

CONSTANTINE ALEXANDER: How much would that be roughly? Would it dramatically change the dimensions?

ERIC ARMY: The deck's about five foot deep. And the minimum we have to

cover is the length for the stair, and it's pretty much just the stair. So there's a -- we need to exit out the door. So you're talking less than five by ten.

CONSTANTINE ALEXANDER: You're not going to dramatically change the --

ERIC ARMY: It's not a substantial --

CONSTANTINE ALEXANDER: It's less than half of the bedroom basically?

ERIC ARMY: Yeah.

BRENDAN SULLIVAN: Okay. We're going to have to come down one way or the other here. I guess -- and I think your sentiment's correct, we're not to be blinded by the first one and say well, this one is a lot better. So, you know, if this were the first one, would we go with it?

My thought is that this revision, revised two is far more preferable than that.

CONSTANTINE ALEXANDER: I agree.

BRENDAN SULLIVAN: And that I would eliminate the staircase from the -- from that deck all the way to the roof. Hence, it's a little bit less --

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: -- massing there.

BOBBY RILEY: We're more than willing to do that.

BRENDAN SULLIVAN: Hum?

BOBBY RILEY: We're more than willing to do that.

BRENDAN SULLIVAN: And I guess that would be the minimal. I don't know. It would not be my choice. I think if I were the next-door neighbor, I would -- and again, not to call into question their motives, but a lot of times people who are on either side, voice their approval in a sense because eventually they would like to do maybe something, you know, similar

or whatever. But be that as it may. I don't know. I mean, I guess if I were to approve anything, it would have to be revision 3.

MAHMOOD FIROUZBAKHT: It certainly looks better than the second iteration. And I mean, I guess in terms of the massing, I think it would cut some of that visual effect by making it a requirement.

CONSTANTINE ALEXANDER: With those changes that the Chairman suggested I support the petition.

TAD HEUER: I think I could as well. And I very much appreciate your desire to maintain the historical integrity of the old building and providing a new addition that indicates that it's a new structure and not necessarily a meld. I think that this type of structure is so small to begin with and particularly the cladding of it now, it's monochrome and uniform and a lot

of the character except for the roof has been stripped away, in intervening years and it's been added to and everything else. So I think that the second structure, even though I entirely appreciate 99 out of 100 circumstances, would welcome that kind of approach. So next time you come before us don't necessarily think that --

ERIC ARMY: Don't forget that.

TAD HEUER: Don't forget that.

But I would tend to agree, I think that in this situation drawing out the mansard and doing the work all the way around, I think, gives you a better cohesive structure because there is a lot of historical integrity left in terms of detailing and things like that.

ERIC ARMY: We realize this would be a subjective position and so we wanted to make sure -- we did see it both ways. And so we wanted to make sure that we

provided both which it sounds like it is.
Thank you.

TAD HEUER: And I think in terms of massing as Gus said, massing is the massing, if you need this, make it viable or it's not viable at all. So I think taking that into consideration, as I just wanted to give that -- really can't be changed very much from your perspective. This type of provision which the client has showed us tonight, I think goes toward it.

DOUG MEYER: If the staircase to the roof on the second story is removed, what is the situation then with access to the roof?

ERIC ARMY: If we go with the mansard, then there would not need to be access to the roof.

DOUG MEYER: No access to the roof.

ERIC ARMY: That is correct.

DOUG MEYER: And you don't need to say anything about the possibility of deck?

TAD HEUER: It wouldn't be a mansard. It would be sloped all the way around.

ERIC ARMY: I wouldn't recommend hanging out there. Safety precautions.

BRENDAN SULLIVAN: There's no deck shown so we're not including one?

MAHMOOD FIROUZBAKHT: But there would be a deck, correct?

BRENDAN SULLIVAN: No, there's a deck on the second level, not on the --

ERIC ARMY: There would be no roof deck.

MAHMOOD FIROUZBAKHT: So you'd have a deck on the first floor and then a deck on the second floor as well?

ERIC ARMY: That's correct.

MAHMOOD FIROUZBAKHT: With that third revised.

ERIC ARMY: There would -- we would need to cover the landing for the stair per the Mass. Building code, but that's it.

CONSTANTINE ALEXANDER: It wouldn't be a deck. I mean, it would be a rooftop over the stair.

ERIC ARMY: That's correct. It would not be a deck. It would just be a covering that people would not be standing on.

CONSTANTINE ALEXANDER: Yes. A deck for human use, it would be a covering.

ERIC ARMY: Right.

BRENDAN SULLIVAN: Can I just ask you to put those back into the proper order. So this is revision three.

ERIC ARMY: Any drawing that says A2.1. The 2.1 drawings, those would be the third revision.

BRENDAN SULLIVAN: For the record,

there is correspondence on the letterhead of the City of Cambridge, the City Council. Dear Mr. Sullivan, Members of the Board: I wish to express my support for the application of Bobby Riley to obtain a variance to construct an addition and convert the above-captioned property to a two-family dwelling. I fully understand and appreciate the concern voiced by Board members at the prior hearing, and I believe that the modifications that have been made to the plans are very responsive to those issues.

Thank you for taking time to consider my views in this matter and for allowing Mr. Riley an opportunity to modify his submission. I think the result is a credit to the service all of you provide to the city. Signed by David P. Marr, City Councillor.

CONSTANTINE ALEXANDER: Did you get a letter of support from your

neighbors?

BOBBY RILEY: Yes.

CONSTANTINE ALEXANDER: Is it in our files?

BOBBY RILEY: It is. You had a stack delivered this morning. I guess Mr. Grady was out, Sean is sick today, but the smart secretary, she assured me that you would get the packet.

BRENDAN SULLIVAN: And there is correspondence on the letterhead of Sabrina and Bobby Riley dated January 6th. The neighbors who have approved, and it's signed by 10 abutting neighbors. Approval of the plan.

MAHMOOD FIROUZBAKHT: Could I see that, Mr. Chairman?

BRENDAN SULLIVAN: The letter?

MAHMOOD FIROUZBAKHT: The approval letter.

CONSTANTINE ALEXANDER: Can I take a look at the original?

MAHMOOD FIROUZBAKHT: Here's a question for you: Did you share with these neighbors the revised revised plans?

BOBBY RILEY: Yes.

TAD HEUER: So they've seen the full mansard top?

BOBBY RILEY: Yes.

CONSTANTINE ALEXANDER: And there's nothing on here that says that they approve it. But you said you told them by signing it, you're approving it?

BOBBY RILEY: That's correct.

MAHMOOD FIROUZBAKHT: I think it would be definitely helpful to have something a little more concrete. You know, like you would type up the statement saying, you know, I such and such approve the plans, and we want to be very precise about it. You know, reference the plans.

BOBBY RILEY: Sure.

MAHMOOD FIROUZBAKHT: And then they would sign off. So to us it's clear

that, you know --

BOBBY RILEY: I can follow up with that for sure.

MAHMOOD FIROUZBAKHT: That would be helpful for me. And this could be something from my perspective that could be done after a decision which could be delivered to the secretary at the Board of Appeals to complete the file. Because, you know, I don't -- in my mind it's not quite complete.

BRENDAN SULLIVAN: Yes. Maybe that would maybe be two pieces that would have to be filled in.

CONSTANTINE ALEXANDER: And you would have to revise the dimensional form, too.

BRENDAN SULLIVAN: Yes, good point.

ERIC ARMY: The dimensional form?

CONSTANTINE ALEXANDER: You said that the FAR calculation wasn't quite

right because of the -- you didn't count the deck.

ERIC ARMY: Oh, I'm sorry. Thank you.

BRENDAN SULLIVAN: Which made them bump up the open space. Is that right, Counselor Rafferty?

ATTORNEY JAMES RAFFERTY: Yes. I didn't even hear what he said. You think I'd answer no to that question?

BRENDAN SULLIVAN: Anything else, Doug?

DOUG MEYER: No.

BRENDAN SULLIVAN: Tad?

TAD HEUER: No.

BRENDAN SULLIVAN: I'm going to make a motion to grant the relief requested.

The Board finds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner.

The Board finds that the hardship is owing to the fact that the existing house is pre-existing non-conforming to the -- in many respects the width of the lot, the setback, and -- the FAR actually is compliant. Is that right? So it's really setback, dimensional -- dimensions and it's a substandard lot which is existing, pre-existing non-conforming. So that any modification, addition, improvement to the property would require some relief from the Board.

The Board finds that petitioner has made a good faith attempt to address the concerns voiced by the Board, and that the plan approved is a fair and reasonable one and in response to those concerns.

The Board finds that desirable relief may be granted without substantial detriment to the public good, but it would not nullify or substantially derogating from the intent and purpose of the

ordinance.

The Board grants this approval as per the plans submitted, and is dated 12/23/08. And sheet C1.0, A1.1, A10, A21.A, A21.B, A21.C initialed by the Chair. That all work be done in conformance with the plans submitted.

The Board also requires the petitioner to update the dimensional form to reflect slight changes that are proposed in this plan, and that the dimensional form should be submitted as soon as possible. I will be looking for it before I sign the decision. So that will hold up signing the decision. And also that in response to request by a Board member, that the abutters', neighbors' approval form be --

MAHMOOD FIROUZBAKHT: Resubmitted.

CONSTANTINE ALEXANDER:

Resubmitted to make it more explicit that the people who have signed the approval

have viewed the plans and are --
explicitly approve, approve what you want
to do.

Mr. Chairman, are those plans that
you've initialed, do they show the removal
of staircase?

BRENDAN SULLIVAN: That would be
my next condition.

CONSTANTINE ALEXANDER: Oh, I'm
sorry.

BRENDAN SULLIVAN: And if you can
back up, Cathy, just a little bit in
saying that as for the plan -- approved as
for the plans submitted with the
modification that the stairway --
staircase, stairway from the second to
third level be eliminated. And I so noted
that on the plan.

Okay. We have the thing about the
abutters, the neighbors.

Anything else?

DOUG MEYER: No, that's fine.

TAD HEUER: I have a question. Do we need to do anything about parking?

CONSTANTINE ALEXANDER: The plans show we approved in accordance with the plans. The plans show the parking I think. If I recall.

TAD HEUER: They did?

CONSTANTINE ALEXANDER: We put something endorsed of the parking on the lot.

TAD HEUER: Where?

ERIC ARMY: It should be the site plan. And we've listed on the dimensional information sheet that we're asking for two parking spaces.

CONSTANTINE ALEXANDER:
Mr. Heuer's comment is that it's specifically mentioned in the motion unless it's in the plans. I thought it was. Maybe not.

DOUG MEYER: Where? Can you show us?

ERIC ARMY: On the site sheet.
This location here.

TAD HEUER: Show us where the --
it shows the only place on the lot where
the cars could possibly go, but it doesn't
--

ERIC ARMY: The parking is an
existing condition as well. So.... It
wasn't a provision that we were trying to
--

CONSTANTINE ALEXANDER: That's not
quite right. The parking right now. It's
an existing condition, but you only need
one space because you have a one-family
house. The fact that you have parked cars
in tandem is irrelevant. Now that you're
going to a two-family house, you need to
show two parking spaces not in tandem.
And your plans don't show that. So you do
need relief, a variance on the parking as
well. We didn't mention in the motion
anything about any other relief, the FAR

and the like. I thought that --

DOUG MEYER: The setback.

CONSTANTINE ALEXANDER: The setback.

DOUG MEYER: The right side setback.

CONSTANTINE ALEXANDER: So I thought by approving the plan, that picked up the parking. But it doesn't hurt to make it explicit.

BRENDAN SULLIVAN: The Board also waives the requirement for a second parking space and acknowledges the use of tandem parking to satisfy the two parking space requirements. Okay.

All those in favor.

(Show of hands).

BRENDAN SULLIVAN: Five.

(Sullivan, Alexander, Firouzbakht, Heuer, Meyer.)

(Whereupon, a discussion was held off the record.)

(7:55 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Mahmood
Firouzbakht, Tad Heuer, Doug Meyer.)

BRENDAN SULLIVAN: The Board will hear case No. 9715, 37 Roberts Road. Is there anybody here on that matter?

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence dated January 6, 2009 on the letterhead of Vincent J. Paneco addressed to Maria Pacheco.

Maria, please withdraw our application for variance on case 9715, 37 Roberts Road which is scheduled for January 8th.

Any comment on the request for the withdrawal?

(No Response.)

BRENDAN SULLIVAN: All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor. (Sullivan, Alexander, Firouzbakht, Heuer, Meyer.)

(Whereupon, a discussion was

held off the record.)

(7:57 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Mahmood

Firouzbakht, Tad Heuer, Doug Meyer.)

BRENDAN SULLIVAN: Sidney Street.

DOUG MEYER: I did not sit on the original panel for Sidney Street.

BRENDAN SULLIVAN: Sidney Street was not heard. It's probably not going to be heard tonight either I guess.

The Board will hear case No. 9740, 149 Sidney Street. Is there anybody here interested in that matter.

(No Response.)

BRENDAN SULLIVAN: The Board is in receipt of correspondence dated December 17th. To whom it may concern: Acceleron Pharma, Inc. wishes to take a continuance in its application for sign variance in order to resolve outstanding issues with the Planning Board. Attached hereto is a signed copy of the Board of Zoning Appeal waiver form. Sincerely, John Quisel, Q-u-i-s-e-l, Esquire, Vice President.

All those in favor of continuing the

matter until --

MARIA PACHECO: March 12th.

BRENDAN SULLIVAN: -- until March 12th. It's a case not heard.

All those in favor of continuing the matter?

(Show of hands.)

(Sullivan, Alexander, Firouzbakht, Heuer, Meyer.)

CONSTANTINE ALEXANDER: They have to change the sign, too.

BRENDAN SULLIVAN: And on the condition that the petitioner change the posting sign to reflect the new date of March 12th and a time at seven p.m.

(Whereupon, a discussion was held off the record.)

(8:00 P.M.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Mahmood

Firouzbakht, Tad Heuer, Doug Meyer.)

BRENDAN SULLIVAN: The Board will hear case No. 9743, 121 Clay Street.

I open up the matter. I guess the concern I have -- before we get into the merits of the case is whether or not you're aware of the former guidelines of the city?

THOMAS RAWSON: Yes, we are.

BRENDAN SULLIVAN: If you are not, I would suggest that you possibly review and come back at another time. But you are aware of that. Okay.

If you would please introduce yourself for the record. Please spell your last name, and whoever and whenever you're going to speak.

ELENA STONE: My name is Elena Stone. Last name S-t-o-n-e. This is my husband Tom Rawson, R-a-w-s-o-n.

We moved to Cambridge six and a half years ago with -- into the house we live

in now at 121 Clay Street. We love the city for its liveability and the schools and the diversity that it offers our family. And we really want to stay for the long term. Our major motivation for doing this addition is that our two daughters, who are ages 10 and 16 and both go to Cambridge Public Schools, have been sharing a single room since we moved into the house and they have outgrown that and have been waiting very patiently to have their own rooms. So in addition to that, we also want to add a guest room and a study space on the second floor as one of us does consulting work from home and the other is a teacher and does considerable work at home. So to address these problems, we want to construct a second floor shed dormer on the north side of the house, which is symmetrical with an existing dormer on the south side of the house as you can see in the plans and the

elevations that we've submitted. And this will add two rooms and about 250 square feet of living space to the house.

THOMAS RAWSON: We know we're not able to obtain a permit as of right because the primary driving thing there is the height of the basement. It's just a little -- most of it is just a little over seven feet. And if that were not the case, we'd be about .44 on the floor area ratio right now, and it would come up to just a tiny bit of .5 with this addition.

We are aware of the dormer guidelines and have looked at that. And I'll make two comments about that. One is that our understanding is that those are particularly important for a third floor dormers, understanding that they're not specified that way. That's where they have the most importance. And the other thing is that the setback of the dormer wall from the house wall and the length

restriction would create a very asymmetrical appearance on the house, and also would create a lot of structural issues for how the roof load on that wall was supported and so on and so forth. So we are aware of them, but we felt that the best thing to do, and the thing that provides a reasonable amount of additional space also is to make the dormer mirror what's there on the other side.

CONSTANTINE ALEXANDER: Am I not correct that if you wanted -- if we were, if, we were to turn you down, all you have to do is go back, lower your ceiling in your basement by a foot or so and you'd be able to do, as a matter of right, you wouldn't have to comply with the dormer guidelines at all.

THOMAS RAWSON: It hasn't occurred to me.

TAD HEUER: That's exactly my question.

CONSTANTINE ALEXANDER: I'm not suggesting you do that or we're going to turn you down.

THOMAS RAWSON: I don't want to stoop that much in the basement. But no, I understand what you're saying.

BRENDAN SULLIVAN: Well, the house is non-conforming on the left side setback.

THOMAS RAWSON: That's correct. This would not extend that in terms of -- it's the same.

BRENDAN SULLIVAN: Right. But to do any work to it, the house is non-conforming. So essentially you couldn't do it anyhow.

ELENA STONE: Yes, you could.

BRENDAN SULLIVAN: Well, wait a minute. If you were as not to increase --

TAD HEUER: They're in FAR.

CONSTANTINE ALEXANDER: They would be okay.

BRENDAN SULLIVAN: Let me correct myself. It's -- as long as the dormer would not encroach any further into that setback.

THOMAS RAWSON: Yeah, it does not. It's exactly parallel to the wall.

We have met with our neighbors. We showed them the plans and elevations. We have statements of support that should be in the application packet there from all the people that we were able to find at home. Basically that includes all of the abutters, and particularly includes the abutter on that side where the dormer will be constructed, and the next house up on that side. But it includes all the abutters and most of the abutters to the abutters. And there's no -- the plans that we showed them are the plans that you have. So we very much hope you will approve it. And we'd be happy to answer any questions on what we'd like to do.

TAD HEUER: Is the basement finished or is there any reason why it would not be --

THOMAS RAWSON: Part of it has a, what do you call it? You know, Pergo type flooring in it. Part of it has a little bit of a laundry room. It's not usable as living space because of the egress issues.

TAD HEUER: Okay.

THOMAS RAWSON: And the way it's -- it's a cape and there's a block foundation. You'd have to do a huge amount of work to meet that egress requirement.

TAD HEUER: So you just have a bulkhead or something like that?

THOMAS RAWSON: What do you mean a "bulkhead"?

TAD HEUER: Do you have a bulkhead entry or anything in the back, a stairway?

THOMAS RAWSON: No, it's just interior.

ELENA STONE: It's just interior.
There are a couple of windows.

THOMAS RAWSON: There are a couple
of windows. But they're this sort of size
basement window (indicating). And to cut
the plan to meet that requirement, you
have to dig out the bulkhead. Also,
because of the way the -- you'd have to do
that in either the front or the side,
because the way the rear of the house is
constructed, there's been a prior rear
addition. There's no windows to support.

TAD HEUER: Out of curiosity do
you have any idea how a dormer of that
size got on that house to begin with?

ATTORNEY JAMES RAFFERTY: Good
lawyering?

THOMAS RAWSON: Could be.

TAD HEUER: Good lawyering by
anyone present?

CONSTANTINE ALEXANDER: There
probably were no dormer guidelines when

that was built.

BRENDAN SULLIVAN: Well, obviously there were none. They've met the FAR and they're not encroaching any setbacks, and, you know, it was okay.

CONSTANTINE ALEXANDER: How old is the dormer? Do you know how old?

ATTORNEY JAMES RAFFERTY: Twenty years. Maybe less.

THOMAS RAWSON: I believe the construction date for that is sometime in the 1970s. That probably answers it.

BRENDAN SULLIVAN: Any questions by the Board members?

Tom?

THOMAS SCOTT: Can I see the proposed elevation?

BRENDAN SULLIVAN: Gus, any questions?

CONSTANTINE ALEXANDER: No questions.

BRENDAN SULLIVAN: Tad?

TAD HEUER: You just mentioned other houses in the neighborhood have basements that are well under so they don't have the same problem that you do.

THOMAS RAWSON: Yeah. From talking to our neighbors, our understanding is that, you know, we discussed this problem with a number of people and, you know, they're not in that same situation.

TAD HEUER: And in terms of the FAR, of the other petitioning neighboring houses if you took out your basement, would they all be essentially around where you are -- where you would be if we granted?

ELENA STONE: I think very similar, yes.

THOMAS RAWSON: I have a -- I did a fair bit of research in the assessor's database looking at square footage, and this is the -- the blue line is our

current and the green line is our proposed, and the two yellow ones are without the basement counted. And these are the other properties that I was able to get information on. Obviously I couldn't go and measure the actual property, but I used the assessor's database online to pull those off.

TAD HEUER: And you said that if your basement wasn't counted, you would come in just below the .5; is that right?

THOMAS RAWSON: Yeah, that's the two yellow lines there, current and proposed. It's 2376 square feet, and the FAR would be -- it's a 4800 square foot lot so it would be 2400.

TAD HEUER: Right.

THOMAS SCOTT: This right here, is this wall in plane with this wall?

THOMAS RAWSON: Yes. That wall is in plane. And we propose to do the same thing on the other side. Otherwise we'd

have to ask for rear yard setback as well.

BRENDAN SULLIVAN: Let me open it up to public comment while you're going through that, Tom.

On case No. 9743, 121 Clay Street, is there anybody here who wishes to speak on that matter?

(No Response.)

BRENDAN SULLIVAN: I see none.

The Board is in receipt of correspondence. To Chair and Members of the Board of Zoning Appeal: As the owners of the property located at various addresses, we are ready to support the application submitted by Thomas Rawson and Elana Stone, owners of the property at 121 Clay Street, for a variance to permit the construction of the dormer addition which will result in the increase of the gross floor area beyond the maximum 2400 square feet permitted by the zoning ordinance. We have reviewed with the owners of 121

Clay Street the plans and elevations associated with their application. We believe that if the request of variance is granted by the Zoning Board of Appeal will result in a desirable improvement to the property that increases its value, makes it more livable and reflects positively on the neighborhood. We do not believe that the small proposed increase of the interior floor plan will have any detrimental effects at this time. Signed by most of the abutters in some 14 abutters and/or neighbors.

Okay. I would like to close the public comment now.

Mahmood, what's your thoughts?

MAHMOOD FIROUZBAKHT: I'm okay with this.

BRENDAN SULLIVAN: Tom?

THOMAS SCOTT: I guess I'm okay with it. I guess I'm dismayed by the size of the existing dormer. But it seems that

doing something on the other side would create some symmetry to what would probably give it a better appearance, better street appearance.

CONSTANTINE ALEXANDER: I'm in support. I mean, I'm a believer of the dormer guidelines, that it would make no sense to have -- it would be asymmetrical if you complied the dormer guidelines with the new dormer. That doesn't -- aesthetically it doesn't make any sense to me. And I go back to where I was before. I mean, why should we put you to the expense of lowering your ceiling in your basement just so you can build something.

TAD HEUER: I, too, like Gus, am usually a firm believer in dormer guidelines. But in this situation there's an exceptionally large pre-existing dormer, and building a smaller dormer that complies, I'm a big believer it makes more sense. Particularly as Gus mentioned, if

you were to go to the expense of putting in a drop ceiling in your basement to make all this go away from us and you do it by right, I'm willing to support the project.

BRENDAN SULLIVAN: Yes, I guess my initial thought was that it was a bit much. And then if we went back to the dormer guidelines would that make any sense? And I think, as you said, it probably doesn't make much sense. And that you probably could do it by filling in part of the basement which nobody sees. Everybody sees what's on the building and so it's much a-do about nothing I think in that sense.

Let me make a motion that we grant the relief requested.

The Board finds that literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner.

The Board finds that the hardship is

owing to the fact that the existing building is presently non-conforming and any additional complications, slight increase in the FAR would require some relief from the Board.

The Board finds that the proposal is a fair and reasonable one. The petitioner could possibly do it as of right by reducing some of the FAR in the basement which the Board finds to be quite impractical and quite onerous to the petitioner.

The Board finds that desirably may be granted without substantial detriment to the public good and would not nullify substantially derogating from the intent and purpose of the ordinance.

And the Board also acknowledges the many letters of support from the abutters and the neighbors.

All those in favor of granting the relief requested.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Firouzbakht, Scott, Heuer.)

THOMAS RAWSON: Thank you very much.

Sir, may I ask you one question?

BRENDAN SULLIVAN: Sure.

THOMAS RAWSON: On the plans submitted we have skylights in the proposed -- we're in some discussion with the contractor as to the most practical location for those. We understand that the permit has to be issued based on the plans approved by the Board. Is it within the -- is it within our -- is it within the rules to move the skylights or is that something that would require your approval?

BRENDAN SULLIVAN: Well, we don't need to -- I have no problem with it. I guess the -- that's going to be decided

during construction?

THOMAS RAWSON: Yeah. We're talking about where -- in particular the skylight in this room, there's some discussion about whether it's better off to be opposite the window in terms of its design.

BRENDAN SULLIVAN: When is that decision going to be made?

THOMAS RAWSON: We'll talk with the contractor about it. It will be before construction.

BRENDAN SULLIVAN: So if you wanted to -- yes. Let me have that back, again, Maria.

If you want to tidy it up and correct the plan, it would be cleaner.

THOMAS RAWSON: Okay.

BRENDAN SULLIVAN: Or with the Board approval, maybe we can approve some flexibility with the skylights. We don't want somebody to say oh, somebody not

doing their job.

THOMAS RAWSON: No, I understand. We want to comply with the way the rules are written. And we're not talking about the number or anything like that, it's just a question of the position within the room and where that works best.

BRENDAN SULLIVAN: Placement of -- I'm just going to say "flexible".

THOMAS RAWSON: For the skylights.

BRENDAN SULLIVAN: Yes.

THOMAS RAWSON: That's great.
Thank you very much.

BRENDAN SULLIVAN: Okay.

ELENA STONE: Thank you.

(Whereupon, a discussion was
held off the record.)

(8:15 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Mahmood
Firouzbakht, Thomas Scott, Tad Heuer.)

BRENDAN SULLIVAN: The Board will hear case No. 9744, 15 Hubbard Park Road.

ATTORNEY JAMES RAFFERTY: Good evening, Mr. Chairman, Members of the Board. For the record, James Rafferty on behalf of the applicant. To my left is Jonathan Bush and Ms. Dean.

Mr. Bush and Ms. Dean are the new owners of this property. And the application seeks a variance and a special permit. We had been in conversation with the rear abutter, and the plan has actually been modified to remove the deck. There was a deck off the second floor in deference to the abutter's concern. And we thought we were all set frankly, and then we learned that the abutter wants a little additional time to discuss the matter with her husband. So out of an abundance of accommodation and neighborliness, we were wondering if it might be possible, when we return we

anticipate a very modest case, but given the construction schedule that's being faced here, whether we might come back in two weeks.

CONSTANTINE ALEXANDER: We're not meeting in two weeks. Three weeks.

ATTORNEY JAMES RAFFERTY: Three weeks, the next meeting. We would anticipate it would be --

CONSTANTINE ALEXANDER: It would be a case not heard.

ATTORNEY JAMES RAFFERTY: It would be a case not heard.

TAD HEUER: You anticipate the same Special Permit.

ATTORNEY JAMES RAFFERTY: Yes, Special Permit on just the relocation of some windows.

TAD HEUER: Yes.

JAMES RAFFERTY: And it's an interesting issue, you know, the case has a -- it probably has a 1927 variance on it

and it's perhaps the first variance I've seen that Mr. Sullivan didn't sit on.

BRENDAN SULLIVAN: I was away at that time.

CONSTANTINE ALEXANDER: He's been referred to as the Cal Ripken of the Zoning Board I want you to know that.

ATTORNEY JAMES RAFFERTY: I've got the scars to prove it.

But at any rate, it's interesting, it's not a non-conforming wall that we want to change these windows on, because actually it's going to impact construction because it's got a variance. So then we kind of got the analysis well, if the Board in 1927 had seen the window in this location, would they approve the variance? We haven't been able to locate any members of the Board.

TAD HEUER: Have you tried Mt. Auburn?

CONSTANTINE ALEXANDER: If we're

going to continue this case, we probably shouldn't continue this conversation much longer about what happened in 1927.

TAD HEUER: My question is when the case comes back, you know, we have a number of items here, the variance and Special Permit. I presume that when it will come back as fewer items. I'm just wondering if you could outline the items.

ATTORNEY JAMES RAFFERTY: There would be one less item. The deck would be gone. And the deck, the deck wasn't a GFA issue, it was a setback issue. The deck is gone and we've got modified plans. And frankly, we're down to a drainage plan that we thought we had an agreement on, and I think the neighbor wants to have someone review it. But I -- from the other communication with the other neighbors, it's pretty straight forward. It represents about a hundred plus square feet in the bedroom.

TAD HEUER: So that's the conforming addition on the second floor, and it's because it's a conforming addition --

ATTORNEY JAMES RAFFERTY: No, the conforming addition on the first floor is, again, the ten percent issue.

TAD HEUER: Okay.

ATTORNEY JAMES RAFFERTY: So that would be back. Everything would be back, but the -- so it would be the same case but without the deck.

BRENDAN SULLIVAN: So I heard a request to continue the matter until January 29th?

ATTORNEY JAMES RAFFERTY: The next date.

BRENDAN SULLIVAN: It's open to seven o'clock? I won't be able to sit on that one either. So I will miss it twice. But that's all right.

ATTORNEY JAMES RAFFERTY: You

won't be here the 29th?

BRENDAN SULLIVAN: No, no. So you may want to get all your cases in. You may want to load up the docket.

CONSTANTINE ALEXANDER: That's why I didn't want to make it a case heard.

ATTORNEY JAMES RAFFERTY: I appreciate that. Thank you.

BRENDAN SULLIVAN: On the motion then to continue this matter until January 29th at seven p.m. to allow the petitioner additional time to meet with the neighbors.

On the condition that the petitioner sign the waiver form and also to change the posting sign to reflect the -- change the posting sign to reflect the new date of January 29th and the time at seven p.m.

TAD HEUER: And it's a case not heard.

BRENDAN SULLIVAN: And it's a case not heard.

All those in favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander Firouzbakht,
Scott, Heuer.)

(Whereupon, a discussion was
held off the record.)

(8:20 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Thomas Scott,
Mahmood Firouzbakht, Tad Heuer.)

BRENDAN SULLIVAN: The Board will
hear case No. 9745, 40 Landsdowne Street.

BILL HARRIS: Hi.

BRENDAN SULLIVAN: Hi.

Please introduce yourself for the
record. Please spell your last name and
give us your address.

BILL HARRIS: My name is Bill
Harris, H-a-r-r-i-s. Signer Harris
Architects, located at 46 Farnsworth
Street in Boston. I am the architect
representing Millennium Pharmaceuticals on
this application.

CONSTANTINE ALEXANDER: Takeda
Millennium.

BILL HARRIS: Yes, Takeda

Millennium. Thank you. Which we will know better after this.

BRENDAN SULLIVAN: Tell us what you would like to do.

BILL HARRIS: I brought some additional materials for clarification.

Essentially Millennium occupies -- is a sole tenant for two properties on Landsdowne Street, 35 and 40, opposite one another. And they would like to put some signs up that identify their occupancy of those buildings.

One sign is at street level, and because it is proposed to sit on a canopy, it would need to conform to the 13 square foot maximum size area. So what I've done is put together a mock-up of what compliance with the ordinance as it's written would suggest, which is this little bitty sign right here.

I went before the Planning Committee the other night and made this presentation

as well. What we're proposing is this size sign here which we consider to be much more proportionate with the facade of the building and the location. And appropriate because of the setback of the entrance from the sidewalk --

CONSTANTINE ALEXANDER: Can I tell you my problem with what you want to do?

BILL HARRIS: Sure.

CONSTANTINE ALEXANDER: This is not a sign just identifying the occupant of the building. It's advertising. It's advertising. It's Takeda Millennium. And underneath Takeda Oncology Company. Now, why do you need a Takeda Oncology Company to identify the property? Why does this become a little bit of a billboard, if you will, for the company?

BILL HARRIS: Well, I think the source of the sign language is driven by corporate powers far beyond me, that when they represent -- when they represent

their identity, which is up here, they're not selling a product here. But when they represent their identity, that's who they are, that's who they want to be. And that's what is driving the nature of the sign.

CONSTANTINE ALEXANDER: It's advertising for the Japanese parent company. Takeda Oncolo -- Takeda is a Japanese company. The Cambridge occupant is Takeda Millennium. The Takeda name is in the Millennium name. I don't know. I'm not sure I'd turn it down on this basis, but it does trouble me.

BILL HARRIS: Yeah.

CONSTANTINE ALEXANDER: I know it's not your decision. I'm not beating up on you.

BILL HARRIS: Yeah.

BRENDAN SULLIVAN: Well, I think what you're saying is it's over what is allowed and it's probably more words than

is necessary.

CONSTANTINE ALEXANDER: That's right.

TAD HEUER: I'd go further than Gus and say I would be inclined to turn it down because of the excess verbiage that I'm -- it's entirely unclear as to why it's necessary. I had a similar reaction when I saw it.

I think you're correct, the size of the sign for this building, I think the size is absolutely correct. So in terms of, you know, the first board you showed us with what would be allowed makes no sense for this building.

BILL HARRIS: Right.

TAD HEUER: So I think the sign size that you're looking at is probably accurate.

BILL HARRIS: Sure.

TAD HEUER: For the second sign we'll get to it in a second, I'm not quite

as clear. But, again, I mean, my comment was if you remove the Takeda Oncology Company's line, I think you come a lot closer to A, be in compliance with the size, the square footage you're allowed. And B, it would be more in the keeping of the type of sign that identifies the property. If I'm looking around and saying which one is the one I want? I know I want Millennium. I'm not saying I'm looking for a Takeda Oncology Company I don't think.

BILL HARRIS: Right.

TAD HEUER: And that's my concern from the Cambridge visual impact side of things, putting aside their desire or not a desire to have many words identifying them on the side of the building.

BRENDAN SULLIVAN: Yes, it's more than a logo. And I think it's fine on a business card or a letterhead or something like that, but on a building where you're

exceeding the size of the sign to begin with, I think it's more words than necessary.

BILL HARRIS: I wonder, though, what in terms of the -- even Millennium's ability, flexibility in something like this is, because the decisions for --

BRENDAN SULLIVAN: Well, their flexibility is we can say no, no sign.

CONSTANTINE ALEXANDER: You want a sign.

BILL HARRIS: No, but in terms of their wanting to identify their corporate presence on the site and within the community.

CONSTANTINE ALEXANDER: You have it in the words Takeda Millennium. The name of the company, I believe, since the merger is Takeda Millennium. So, you have Takeda. Takeda's got its corporate identity reflected on that building in the name of the sign. It's the tag line on

the bottom. Repeating. A Takeda Oncology Company.

BILL HARRIS: That's the piece that's objectionable?

CONSTANTINE ALEXANDER: Not the Takeda Millennium. That's fine.

BILL HARRIS: Oh, okay. So in other words, if we were to go -- I'll zoom in on the -- I guess this is closer even though it's the smaller version. But, in other words, this, this and this are okay, it's the bottom line?

CONSTANTINE ALEXANDER: For me, that's my problem.

BRENDAN SULLIVAN: Yes, yes.

BILL HARRIS: Interesting.

TAD HEUER: And more so for me at least on sign B, the illuminated sign at the top. This one, I could go either way, you know. It's on, it's recessed, it's smaller.

BILL HARRIS: It's relatively

small really.

TAD HEUER: It's in size keeping with the setback and the structure of the building. Once you're up well above the roof line of many buildings, you're internally illuminated which is something that we obviously look more closely at. At that point additional verbiage, I'm not even quite sure could be discerned from a distance. I mean, you'll tell us about how that, the height of the font is constructed. But at that point I think we're looking for a simple less building identifiers. I mean, my sense is that if you needed Takeda Oncology and you're trying to find it from the street, not when you're scanning on the skyline to see who they are.

BILL HARRIS: Okay. Can we go back to this one for a moment? Because I still do have a question because I'm going to have to go back to them, of course, and

try and convey appropriately what I understand to be your concerns.

And I don't know enough about the -- I could imagine that they would be almost more interested in seeing the phrase spelled out at the bottom, The Takeda Oncology Company, rather than having the extra Takeda -- I don't know. But if this Takeda were to disappear and have the subscript there --

CONSTANTINE ALEXANDER: To me, I'm only one member of this Board, it's the subscript, I have a problem with it. It's pure advertising in my mind. And that's not the purpose of allowing a sign on this building. And I think you'll find, I think I'm right, that the name of the company is now Takeda Millennium. It's not the legal name, it's how it's known because Takeda bought Millennium.

BILL HARRIS: As opposed to The Takeda Oncology Company?

CONSTANTINE ALEXANDER: That's a logo.

BRENDAN SULLIVAN: That's a tag line.

CONSTANTINE ALEXANDER: Tag line, whatever you want to call it.

BILL HARRIS: Interesting. Interesting.

BRENDAN SULLIVAN: It's not an identifying feature. It's -- somebody said an advertisement.

CONSTANTINE ALEXANDER: It is. It's a billboard in a sense.

BRENDAN SULLIVAN: Which I think is not necessary in my mind and --

BILL HARRIS: Sure.

BRENDAN SULLIVAN: -- and I think it's more words than is necessary.

BILL HARRIS: Huh, interesting.

MAHMOOD FIROUZBAKHT: I haven't quite gone through the sign regulations recently, but is there sort of guidance in

there that would lead you to believe that the purpose of the signage as an identifying element?

CONSTANTINE ALEXANDER: No, they can comply with the sign by-law with all due respect. They can put on it and then they could have that tag line. But when they're going to ask relief from us, to make a sign bigger than what is allowed, personally I take a harder look by putting in the sign that would be advertising. I don't see a need for it.

MAHMOOD FIROUZBAKHT: So in other words, if it was strictly an advertising sign and it complied with the guidelines, that would be, that would be perfectly fine.

BILL HARRIS: Hmm, interesting.

TAD HEUER: I guess in my mind it's similar to if you said Fenway Park, The John Henry Company, The Boston Red Sox. I mean, I know where it is. I've

been able to get there. The fact that it is or is not owned by certain subsidiaries, corporations, that it's, you know, it has any kind of corporate structure, is kind of beyond an identifier which is in my mind what the sign is meant to convey. Once we're looking at additional size, I think the identifier aspect would be a more of a problem.

BILL HARRIS: Interesting. You all seem -- well, you're not, perhaps -- well, are you all pretty much in an agreement on that?

BRENDAN SULLIVAN: Yes.

BILL HARRIS: Interesting.

MAHMOOD FIROUZBAKHT: I mean, I defer. I think given the location of the sign and the size of it, I just -- I don't have the same problem. I certainly would, you know, as Tad was saying, if we were up above --

TAD HEUER: And we are.

BILL HARRIS: Well, let's move up above.

MAHMOOD FIROUZBAKHT: On that one I would have that issue. But on this one I would not given the visibility of it. But I think I'm out numbered by -- on the Board.

BILL HARRIS: This is actually the view from the corner of Mass. Ave. One of the things I wanted to show here, was certainly the precedent in terms of that kind of sign with Novartis there down the block. So in principle -- I guess there's two issues: One is the principle of it, and the other is that tag line concept. Is that the same issue here for you folks?

CONSTANTINE ALEXANDER: I think what Tad said and I think Mahmood seconded it, it's even more severe here it seems to me. I too would, you know, if I had to blow my nose, I could live with the tag line on the sign over the front door.

But, you know, at that height, and it's going to be illuminated, I think I have more of a problem. Because you need a lot of relief for that sign. It's too high. It's like three different things you don't comply with. And so I think you can make the sign more compliant and take out the tag line.

BILL HARRIS: If we took the tag line out there, could you hold your nose and allow it down here?

BRENDAN SULLIVAN: I for one just don't think it's necessary at all. It's an advertising feature, not an identifying feature.

BILL HARRIS: Yeah.

BRENDAN SULLIVAN: And I think the signage, we're being very careful, because with all the biotechs and all the other similar pharma companies coming into the area, everybody wants neon lights, you know, blazing this is us.

BILL HARRIS: Sure.

BRENDAN SULLIVAN: You know. And coming across the bridge from Boston and whatever, you know, yes, you sort of, you know, like to see it I guess coming from out of town from wherever.

CONSTANTINE ALEXANDER: The record needs to be clear. It's not the mere fact that it's advertising that's a problem. In other words, we don't want to get into a First Amendment issue. It's the fact that you, because of the advertising, you need to build a sign bigger than our zoning by-law allows. And if we don't see the need for allowing you to build a bigger sign our sign by-law requires because of the advertising. But if you could build a sign that complies in all respects with our zoning by-law, to put whatever advertising on there you want, that's your legal right.

BILL HARRIS: I believe --

CONSTANTINE ALEXANDER: I don't want the case to go off on the basis -- it's advertising. It's on the basis that your sign is not compliant because of the too many words, those extra words being advertising.

BILL HARRIS: If we were to remove the bottom tag line in both situations, the sign would still be too big relative to the zoning ordinance. But also to comply with the -- well, we couldn't -- there's no way to comply with the zoning ordinance on the highway. There's no precedents. To comply with the one down here, even if you take it off and expand it slightly -- I'm not even sure we could expand it slightly, because proportionally you have to do width the same as height, you know, it'd be marginal. It still wouldn't be appropriate in the scale of the building.

TAD HEUER: No, but it would

return to its function as identifying the building as to that company.

BILL HARRIS: No, I guess what I'm saying is if you compare these two, that from my eye, at least from across the street, clearly when you get up to it, you can see the bottom line. But from across the street, you can't see in either case really that bottom tag line. And here it's, it seems almost barely visible.

TAD HEUER: But you're still too big. You're going to be over in either situation.

BILL HARRIS: No, no, this one --

TAD HEUER: That one's not.

BILL HARRIS: It's not too big for the ordinance, but it seems too small for the scale of the building. So what I'm asking is, would you be in a position to grant the relief from the ordinance for the scale of the sign that seems appropriate to the scale of the building

setback and appropriate to the intent of the ordinance for 13 square feet, as it was written, as it was explained to me at the Planning Board, so the sign is scaled correctly but without that content?

MAHMOOD FIROUZBAKHT: It sounds like you have that approval here for that sign.

CONSTANTINE ALEXANDER: We're not in the business of giving basically advisory opinions. But I think you can draw your own conclusions as to how we're going to react to that from the comments you're hearing. I don't want to go on the record and give you an answer. That's my perspective.

BRENDAN SULLIVAN: Well, my opinion is that if it's going to exceed what is allowed, then we should minimize the amount of overage that it's allowed. And that the sign on the building should be an identifying feature. And the name

of the company is that identifying feature, period.

MAHMOOD FIROUZBAKHT: I just kind of -- going back to what Gus was saying. I do have an issue with putting that kind of caveat on it because we're almost saying then we're limiting the purpose of the sign and the, you know, the -- I mean, the form of expression in terms of the speech impacted, you know, to use the freedom of speech language there, but the purpose could be whatever the owner wants it to be. I mean our --

BRENDAN SULLIVAN: The purpose to me is to identify the building. That could be, you know, a broad -- but I feel that once we exceed what is allowed, then we should try to minimize -- it is minimized to my satisfaction with the simple name of the outfit.

MAHMOOD FIROUZBAKHT: I hear what you're saying.

BRENDAN SULLIVAN: And that's how I would leave it.

MAHMOOD FIROUZBAKHT: Because at a certain point you want to serve a function of what -- and the function of that sign is to identify the building, and therefore by giving it a tag line, you get to have a -- hopefully we're going to propose to have the sign that size, but without the tag line, and then serve the main purpose of that sign as opposed to advertising.

BILL HARRIS: Understood.

And the same thing applies or do we need further discussion on the high sign as well?

BRENDAN SULLIVAN: Again, I would, I would just have the name of the company Takeda Millennium.

CONSTANTINE ALEXANDER: As you can see from other buildings in the area, like Novartis, this Board is sympathetic to cases where people want to put signs up

high on buildings even if they're illuminated. You should take some comfort in that.

BILL HARRIS: Understood.

On a practical basis in terms of the process here, does this mean that we start from the beginning again? Can we -- if this were a dormer addition and you said well, you know, if you could come back and reposition the windows kind of thing, or what would you advise as far as that goes?

BRENDAN SULLIVAN: No. But -- well, I don't know, maybe we could, we could, if we were to approve with just the name of the building, Takeda Millennium and with the logo I guess which is that and that's it.

TAD HEUER: Your question --

CONSTANTINE ALEXANDER:

Mr. Chairman, I wouldn't go there. I would rather this case be continued and you come back with new plans, new sign

design to be considered. I don't think we should try to approve it subject to certain changes. Particularly since those changes were gonna get into the advertising part of the sign. I don't want to go there.

TAD HEUER: I wouldn't want to put him in the position of having to come before us and approve the sign and then go back to the client and the client says that's essential, we'll do -- we would -- if we needed to do that, we would have a different sign design entirely and then you're back in front of us with a different design.

BRENDAN SULLIVAN: So the logistics is we possibly could continue it to another night. You have a conversation with the powers that be and convey our sentiment to them. And if it means just erasing, a simple eraser, and then we can see what it's going to look like, and then

we'll look at it again. That would be the cleanest way. I think you're probably correct.

CONSTANTINE ALEXANDER: It's got to be a case as a case heard. So all five of us have to be available for the date.

BILL HARRIS: I'm not sure I understand. The same five?

CONSTANTINE ALEXANDER: Yes. The same five.

BRENDAN SULLIVAN: Yes, the same five.

CONSTANTINE ALEXANDER: To be causally related to the merits of the case and to continue the case, it's a matter of law when the case is no longer continued, the same five people have to hear the case.

BILL HARRIS: Okay.

CONSTANTINE ALEXANDER: Or less if you want to go with less.

BILL HARRIS: In terms of your

comment, though, a moment ago about wanting to save me the effort of going back and then having to return again if that's not acceptable, and the whole thing changes, if there were provisional approval, then you might never see me again. And I would be fine resubmitting, you know what I mean? I see where you don't want to --

BRENDAN SULLIVAN: I think we have to continue it to have discussions with your client and come back with a clean, fresh plan. That may be the way to do it.

The earliest that we could hear this would be February 12th.

What does that look like, Maria?

MARIA PACHECO: We have three continued already.

BRENDAN SULLIVAN: And this should be fairly simple.

First of all, does that allow you enough time, February 12th?

BILL HARRIS: Yes.

BRENDAN SULLIVAN: Are we
available February 12th?

MAHMOOD FIROUZBAKHT: Sure.

BRENDAN SULLIVAN: So it seems to
be a go, go.

CONSTANTINE ALEXANDER: Just one
question, Mr. Chairman. Has the Planning
Board commented on this?

BRENDAN SULLIVAN: Yes.

CONSTANTINE ALEXANDER: I think it
has to go before the Planning Board.

BILL HARRIS: They wrote a letter.
They forwarded a letter. Do you have
that?

BRENDAN SULLIVAN: They are in
approval of what's being presented.

CONSTANTINE ALEXANDER: Oh, they
did.

BILL HARRIS: Very supportive, in
fact, as it happens.

BRENDAN SULLIVAN: So this is

going to be continued.

Let me make a motion to continue this matter until February 12, 2009 at seven p.m. on the condition that the petitioner sign a waiver to the statutory requirement for a hearing, a decision to be rendered thereof, and also that you change the posting sign. You have a posting sign on the building?

BILL HARRIS: Uh-huh.

BRENDAN SULLIVAN: To reflect the new date of February 12, 2009 and the time of seven p.m.

BILL HARRIS: And what's the waiver?

BRENDAN SULLIVAN: There's a statutory requirement --

BILL HARRIS: What do you want me to sign?

BRENDAN SULLIVAN: We have to hear a case and render a decision within a certain time frame.

BILL HARRIS: Oh, I see, yes.

BRENDAN SULLIVAN: This may bump it beyond that. So we just want to make sure that we do everything legally.

CONSTANTINE ALEXANDER: You're not giving up any rights other than the fact you have the right to have a quick decision.

BILL HARRIS: So then it wouldn't be continued, correct?

BRENDAN SULLIVAN: Well, we would go to plan B.

All those in favor of continuing the matter?

(Show of hands).

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Firouzbakht, Scott, Heuer.)

BRENDAN SULLIVAN: Thank you.

BILL HARRIS: Thank you.

(Whereupon, a discussion was held off the record.)

(8:40 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Thomas Scott,
Mahmood Firouzbakht, Tad Heuer.)

BRENDAN SULLIVAN: 9746, 22 Fresh
Pond Lane.

MAGGIE BOOZ: My name is Maggie
Booz, B-o-o-z. And I'm the architect
representing my clients.

PHEBE KIRYK: I'm Phebe Kiryk,

K-i-r-y-k one of the owners of 22 Fresh Pond Lane.

ADAM KIRYK: Adam Kiryk.

BRENDAN SULLIVAN: They're not even working, but that's okay:

ADAM KIRYK: It seems very official.

BRENDAN SULLIVAN: Well, we found out -- we're supposed to be using them, but the problem is that it goes throughout the entire first floor. And if there's a meeting next-door, then they hear what's going on here. So, they're there for show only.

Okay. Maggie, if you want to tell us what you'd like to do.

MAGGIE BOOZ: Okay, sure. I brought these boards just to illustrate a little better. So I'll show you this one first.

This is a copy of what you all were given in the application. My clients are

seeking a variance order to build an addition to the rear of their house. We can, the addition is outlined in the grey shadow in the plan. It's a two-story addition with sort of a rec room, family room type space in place of what is now an exterior deck. And then a fourth bedroom upstairs on the second floor. In addition, on the first floor there's a one-story portion that's a mud room. Their driveway comes in from Fresh Pond Lane right here, and their garage is right here. And they currently don't have any -- there's no door on that side of the house. You sort of come around the back of the kitchen and come in through a door right here right now. And there's a mud room. It's just a door into where the table is, and there's no closet. And so we're trying to solve a couple of things here. Get them a family space that's actually adjacent to the kitchen, and

adjacent to the backyard, and it opens out onto the backyard, as well as try to solve this entry problem. So this is the solution that we've come up with.

What it is violating is the floor area ratio, and it's violating it by a pretty minimal amount. In my estimation it's -- their house right now is .45, and we're looking for a variance that would allow them to have a violation at .56.

TAD HEUER: That's about 800 square feet; is that right?

MAGGIE BOOZ: That's right, yes. About 700. About 700 square feet actually.

TAD HEUER: 760?

MAGGIE BOOZ: Yeah, okay. We're going from -- I do have this information.

TAD HEUER: 3231 to 3994.

MAGGIE BOOZ: 3231 to 3994, yes. 763.

BRENDAN SULLIVAN: 7-6-3.

MAGGIE BOOZ: So, we are not in violation in terms of setbacks in this proposal. It's strictly floor area. I mean, my -- in the supporting statements, you know, I was sort of going through this, you know, we would not be violating at all if it were not for the whole basement issue. We have a basement that's a little bit over seven feet. It's seven, one. It varies -- seven -- as they do. About seven, one. It's a very wet basement that they don't use for anything except storage and laundry. We're actually moving the laundry upstairs because of the basement. And, you know, we're -- were they to build out that basement and put in a floor, they would instantly be, you know, not be in compliance with the building code because the space would be higher, it would be lower than seven feet. So even if you could build it out, we couldn't comply

with state building code. And so that's -- and that's the thing that's pushing them over in terms of FAR in terms of this thing. Also, the house sits very low to the ground so to get daylight out there -- so there are many, you know, when I look at it at that way, it seems to me, the, you know, the way our ordinance is, we count the basement. But that basement is pushing us so far. And so we're coming before you for relief.

BRENDAN SULLIVAN: So the existing house is non-conforming. The right side setback is in violation also. It's supposed to be 15 feet. It's twelve foot, four now. You're not violating it anymore, but it's --

MAGGIE BOOZ: Yeah, it's a non-conforming house.

BRENDAN SULLIVAN: So that the whole house is non-conforming. So any addition would require some relief

basically.

MAGGIE BOOZ: Right.

BRENDAN SULLIVAN: And some of the FAR is in the basement. How much is in the basement that's unusable roughly?

MAGGIE BOOZ: About 794 square feet.

CONSTANTINE ALEXANDER: That's the basement?

MAGGIE BOOZ: That's the basement.

CONSTANTINE ALEXANDER: So roughly the same amount of space that you're adding for the addition?

MAGGIE BOOZ: Yeah, that's right.

BRENDAN SULLIVAN: So that if they could either raise the bridge, lower the water, whatever might be in the basement, even though their FAR -- again, so the only violation is a non-conforming existing setback?

MAGGIE BOOZ: Yeah, right.

PHEBE KIRYK: We're not going out

to the edge of that part of the house,
anyhow.

MAGGIE BOOZ: It's just an
existing condition.

BRENDAN SULLIVAN: It's on the
driveway side.

CONSTANTINE ALEXANDER: Have you
talked to your neighbors?

PHEBE KIRYK: Yeah.

CONSTANTINE ALEXANDER: And
they're in support?

PHEBE KIRYK: Yeah. We got a
couple of people right back, and then
other people didn't say anything. We have
a funny yard. It's kind of -- other
neighbors come in like pies, so we have
probably six different neighbors kind of
around. Because our house looks out to a
cul-de-sac circle in the back. But
everybody has been very positive. Very
close-knit neighborhood which is one of
the reasons why we're trying not to move

away. It's been a successful community that way.

TAD HEUER: I have a question on the extension of the addition as seen from the front. So right now it's at -- can you tell me how far that extends out? I'm at the front and I'm looking at the left side, how far out does the extension go?

MAGGIE BOOZ: In which? Which dimension are you looking?

PHEBE KIRYK: Right here.

TAD HEUER: Right. So I see a --

MAGGIE BOOZ: Right here?

TAD HEUER: Yes. So, if I'm looking at the east elevation on the left-hand side, I see the massing of the new construction. It looks like it comes out about four feet, six feet, eight feet?

MAGGIE BOOZ: This dimension right here? That's what you're asking?

TAD HEUER: Uh-huh.

MAGGIE BOOZ: That's about six

feet.

TAD HEUER: Okay. I guess my question slash concern is -- so if I'm looking at this from the front, it's not hiding -- so looking at the rear elevation there's that --

MAGGIE BOOZ: It's peeking out behind the corner of the house, that's right.

TAD HEUER: Right. Is there any reason in looking at the plans, I think it was 83.2 whatever we had, is there a reason that the master bedroom can't be swinging over on top of the mud room nearby to make it have the overhang coming out and visible from the street? I guess my question is, the reason it can't be hidden behind the front facade so that when you're looking from the street you would get the same amount of space behind it, we wouldn't see the addition itself.

MAGGIE BOOZ: You mean how you --

lining up this side up of the addition
with
the --

TAD HEUER: And pushing it out
over the mud room on the second floor.

MAGGIE BOOZ: And pushing it out
over the mud room on the second floor.
But we're not in violation on that side so
why would we do that?

TAD HEUER: You're in violation of
FAR and you need a variance.

MAGGIE BOOZ: No, but you're
saying making up the difference with the
extra square footage --

TAD HEUER: I'm saying if you
wanted the extra square footage. My
question is given that --

PHEBE KIRYK: The reason is you --
because you'd lose six feet here, which
would make this room quite tiny. We don't
need a very long mud room.

MAGGIE BOOZ: And there's a

bathroom window right here.

PHEBE KIRYK: We need a place to eat our breakfast together. So that's kind of, I think if I can give the logistics of what you're saying, that would be one answer that I have.

TAD HEUER: Yes.

PHEBE KIRYK: The space is gained it's true, but nowhere that it's useful.

TAD HEUER: I'm sorry, on the second floor. Obviously the first floor is hidden by what you have existing. On the second floor, is that the master bedroom; is that right?

ADAM KIRYK: Yes.

TAD HEUER: Pushing the master bedroom out over the mud room, gaining, actually the same amount of space, and trimming off what you would see from the street from the second story -- -

BRENDAN SULLIVAN: I think what he's saying is taking this and moving it

here. In other words --

MAGGIE BOOZ: Well, let me say this, so shaving -- you know, what we would need to shave off is three hundred --

BRENDAN SULLIVAN: In other words, I guess the question is, the master bedroom has to go this way, Maggie? Is that what you're saying, it really needs to go this way for room layout?

MAGGIE BOOZ: Well, I guess -- I guess what I'm saying is that I don't think we can shave off 300 square feet. I think we need to get rid of the whole bedroom to do that. And that's what we would need to do to bring it into conformance. So bringing it -- so shaving off that part of the building wouldn't bring us into conformance. We would still seek relief from the variance.

TAD HEUER: I'm not looking for requirements.

MAGGIE BOOZ: You're talking aesthetics.

TAD HEUER: You're talking aesthetics.

MAGGIE BOOZ: Pardon me for saying this, I mean this is in total respect, but why is the Zoning Board advising on aesthetics?

TAD HEUER: Well, because we're looking at an FAR violation. I mean, you're here for a variance for additional space and that's part of the space --

CONSTANTINE ALEXANDER: Aesthetics is all relative to an FAR violation.

MAGGIE BOOZ: Okay. But I can't shave off enough to bring it into conformance. Without eliminating --

TAD HEUER: You could, you don't want to.

MAGGIE BOOZ: -- the second floor.

TAD HEUER: Right.

MAGGIE BOOZ: No, no. I mean your

suggestion would not bring us into conformance so I --

TAD HEUER: Right.

CONSTANTINE ALEXANDER: I think what Tad is trying to suggest is that the improvement of the aesthetics would justify the granting of relief for the FAR. If you have, you have an excess FAR and an unaesthetically pleasing building, that's the problem.

MAGGIE BOOZ: I guess I beg to differ then.

BRENDAN SULLIVAN: Less visual impact.

TAD HEUER: Yes, less visual impact.

PHEBE KIRYK: I mean, is one -- was -- the assumption is that you're trying to automatically hide the addition, which wasn't necessarily our top priority because we think it will enhance the house definitely from the fact -- which we also

have photographs -- the back is very stark. And from the front it's a very classic colonial, obviously, like many places in Cambridge. But I guess the aesthetic peaking around was not a detriment to the aesthetic. It was interesting with the cladding it was actually going to be the same width as the brick, and much the same color. And so, if we're going to get into aesthetics, I guess from where we sit, we thought that was both interesting and beneficial.

BRENDAN SULLIVAN: It changes the room obviously. It changes the flexibility of the layout of the room.

MAGGIE BOOZ: I understand it does.

PHEBE KIRYK: Why?

BRENDAN SULLIVAN: It's only eight feet, it becomes what do you do with that space then?

TAD HEUER: I'm just asking if

it's viable. I guess the other reason I was asking is because the way the addition that -- the gable roof addition that Maggie has put into the L is kind of tucked in. And you get -- I presume that's what's peaking on the front view; is that right?

PHEBE KIRYK: We're going to try to get -- I mean --

ADAM KIRYK: We'd like to -- we're not going to remove it. Obviously we're not going to do anything to it other than we thought about painting it to try to -- right now it's this stark white that you see.

PHEBE KIRYK: We would try to hide it.

ADAM KIRYK: We'd like to try to help it fit in aesthetically as well as possible. But it's there.

PHEBE KIRYK: It's there.

TAD HEUER: I guess when I was

looking at it my question was, again, in terms of room layout I can understand that. If it was six of one, half dozen of the other, I can put the master bedroom, swing it around the back and kind of tuck it in the same way that that addition is. So you see the peak from the street centered over the front door, but you've gained a lot of space without necessarily a significant visual impact that looks completely out of place. You know, if you had stuck a dormer on the front, you know, a shed dormer looking at us in front view, right? Much different than what you have here. That's where I was going with this kind of question.

MAGGIE BOOZ: Okay. Okay.

Understood.

TAD HEUER: Now having understood why.

THOMAS SCOTT: I think what you had suggested would be detrimental to the

plan. Plus I like the way this looks. You know, this modern piece kind of just peaking out from behind the back of this really nice colonial historical looking building, I think is really -- and I think materials, I'm assuming they're all natural wood. I think it's a real nice play of materials. And I like it.

CONSTANTINE ALEXANDER: I concur with Tom. I like it, too.

TAD HEUER: And your basement is unfinishable, right, is that the sense? That's what we got from your application --

PHEBE KIRYK: Well, based on the ceiling height and the wetness, we did explore that, but it takes things like steel beams, shoring it up, you know, it's a huge production without the promise that it would work.

ADAM KIRYK: The problem is digging down to get --

PHEBE KIRYK: Yeah.

ADAM KIRYK: And then once we had to dig down, we'd then have to create sunlight -- wells, which would really serve as -- not only going into the backyard but also become a danger because of the pits. We would have to have a fence.

PHEBE KIRYK: The house is almost at ground level. It's a bit odd in that way actually. So that was another issue. There's no front steps really. And so it's just right there on the floor which did impact ceiling heights and how we could have played with that.

BRENDAN SULLIVAN: It's just in terms of living space under zoning, but the state building code, it would be considered abandoned space -- uninhabitable.

CONSTANTINE ALEXANDER: From my point of view, I would rather encourage

living space to be an addition above ground and then digging down in the basement.

THOMAS SCOTT: I agree.

BRENDAN SULLIVAN: Well, okay.

Is there anybody here who wishes to speak on the matter 22 Fresh Pond Lane?

(No Response.)

BRENDAN SULLIVAN: I see none. There was no correspondence, I believe? No letters from any of the abutters? Okay.

Mahmood, what are your thoughts?

MAHMOOD FIROUZBAKHT: I really don't have a real inkling on this one one way or the other, so I defer to the other Board members.

BRENDAN SULLIVAN: Okay.

Tom?

THOMAS SCOTT: I think when I first saw it, I was a little taken back. But as I got into the plan, I think the

plan works really great. And I think aesthetically just the juxtaposition of the, you know, style I think is really interesting. And the fact that it's not front and center or just on the street, it's tucked around, just peaking out from behind is a nice, nice way to kind of deal with the addition that I agree with Gus that, you know, having the additional space above the basement is definitely a plus. So I'm in favor of it.

CONSTANTINE ALEXANDER: I'm in favor. The relief is modest and it's driven only again by a basement issue, unusable basement. So I don't see any detriment to the zoning, to the zoning by-law, and I think it's a hardship.

TAD HEUER: I'm not as much of a fan of the design as Tom is, but exactly as we had earlier this evening, we had people come in whose sole issue, they were within the FAR if you didn't count

essentially unusable basement that was technically within zoning code. And in this situation I think we have nearly an identical situation in front of us, where but for an inch or two in the ceiling, a hundred years ago, we probably wouldn't have to be in front of us right now. So I'm happy to grant it on that basis.

BRENDAN SULLIVAN: Fresh Pond Lane, is not in a historical district at all?

MAGGIE BOOZ: No.

BRENDAN SULLIVAN: It's right outside of everything.

MAGGIE BOOZ: I mean, if we were looking to do some -- if we were looking to do demolition, it would be subject to obviously.

MAHMOOD FIROUZBAKHT: So relief required here is for FAR and also the setback?

CONSTANTINE ALEXANDER: No, no

setback.

MAHMOOD FIROUZBAKHT: No setback?

BRENDAN SULLIVAN: The house is in violation of setback making it is existing non-conforming. It's not being extended so it's really FAR.

ADAM KIRYK: That's the way it was originally built is that what you're talking about?

TAD HEUER: Once the setback, that once the zoning code is passed, it's in violation through no fault of its own.

BRENDAN SULLIVAN: Let me make a motion to grant the relief requested as per the plans submitted and initialed by the Chair.

The Board finds that a literal enforcement of the provisions of the ordinance would involve a substantial hardship to the petitioner because it would preclude the petitioner a slight addition, modification and improvement to

the existing structure.

The Board finds that the hardship is owing to the fact that the existing structure is non-conforming.

The Board finds that the addition will be conforming to setback at the slight overage on the FAR, could be made up in the basement, however, the basement is not practical due to the wet conditions and is uninhabitable, and as such, the slight FAR to the above grade is fair and reasonable request.

The Board finds that desirable relief may be granted without substantial detriment to the public good and relief may be granted without nullifying or substantially derogating from the intent and purpose of the ordinance.

And you're going to live and die by these, right?

MAGGIE BOOZ: Yeah, yeah.

BRENDAN SULLIVAN: All --

MAGGIE BOOZ: I hope not die, but

--

BRENDAN SULLIVAN: No changes?

MAGGIE BOOZ: No changes.

BRENDAN SULLIVAN: All those in
favor.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Firouzbakht,
Scott, Heuer.)

MAGGIE BOOZ: Thank you.

(Whereupon, a discussion was
held off the record.)

(9:00 P.M.)

(Sitting Members: Brendan Sullivan,
Constantine Alexander, Mahmood
Firouzbakht, Thomas Scott, Tad Heuer.)

BRENDAN SULLIVAN: The Board will
hear case No. 9747, 211/321 Alewife Brook
Parkway.

ATTORNEY BRUCE EMBRY: Good
evening. Happy New Year.

BRENDAN SULLIVAN: Hi.

BRUCE EMBRY: My name is Bruce
Embry. I'm an attorney here in Cambridge.
Clark, Hunt and Embry is my firm. We are
at 55 Cambridge Parkway. I represent the
Chipolte folks. I'm joined tonight by
Brad Tootman (phonetic) who is the general
manager of Chipolte. The application
petition here is for a fast food Special
Permit. It's joined with an additional

application for eight outdoor seats; two tables of four chairs as been described on the plan.

CONSTANTINE ALEXANDER: You don't need zoning for that, do you? That's not for zoning relief?

ATTORNEY BRUCE EMBRY: I don't think so.

CONSTANTINE ALEXANDER: No, no.

ATTORNEY BRUCE EMBRY: The site of this is the old Ground Round site, at the point -- at the Fresh Pond Circle. I think everybody's familiar with the location. It has historically been a restaurant. I'm trying to go back into my mind as an old Cambridge guy, was that a Howard Johnson's that used to be there 25, 30 years ago?

CONSTANTINE ALEXANDER: Howard Johnson's owned Ground Round.

ATTORNEY BRUCE EMBRY: Exactly. So, it's been through many incarnations.

The fast food location here, the Chipolte location is intended to be one of several stores within the new development that's going there. I did sort of a drive by. There are two Dunkin' Donuts, a McDonald's, a Burger King, Starbucks, Cheddars, Mama Goo's, D'Angelo's. And if you want to count Whole Foods as takeout, if you've got a good arm, you can hit all of those with a baseball from this location. So it's really not different than what's going on in the local neighborhood. We don't believe it will create any additional traffic or pedestrian issues. And Brad can, if you have any concerns or questions about how the establishment is operated, he can certainly give you that information.

CONSTANTINE ALEXANDER: There are certain things we have to check off for fast food. I'll find it. It's section 11.31.

ATTORNEY BRUCE EMBRY: Sure.

CONSTANTINE ALEXANDER: You touched on traffic problems. Whether the establishment will reduce available parking, I for one want to return to that.

ATTORNEY BRUCE EMBRY: Yes, sir.

CONSTANTINE ALEXANDER: Threat to public safety and the streets and the sidewalks. It's your view that nothing in Chipolte that will threaten the safety of the --

ATTORNEY BRUCE EMBRY: We certainly don't think so, no.

CONSTANTINE ALEXANDER: Encourage of people double parking --

ATTORNEY BRUCE EMBRY: Those mad burrito people.

CONSTANTINE ALEXANDER: Encourage or produce double parking on the adjacent public streets.

There's no parking on the adjacent streets?

ATTORNEY BRUCE EMBRY: No, it's really not possible actually so.

TAD HEUER: And even if possible, it would be inadvisable.

ATTORNEY BRUCE EMBRY: Well, it would be suicidal.

CONSTANTINE ALEXANDER: The physical design shall be compatible with and sensitive to the visual and physical characteristics of the other buildings, public spaces and uses in the particular location.

ATTORNEY BRUCE EMBRY: As we mentioned in the petition, we believe actually that the -- that the new development there with the new storefronts and the new physical appearance of the exterior of that development is actually going to enhance the neighborhood and bring some gaiety to that kind of baron corner there.

CONSTANTINE ALEXANDER: The

establishment -- this is one of my favorites -- fulfills a need for such a service in the neighborhood or in the city.

I think you've already -- you've undermined that argument already by telling us about all the other fast food operations nearby.

ATTORNEY BRUCE EMBRY: Well, it essentially replaces what was an existing restaurant.

CONSTANTINE ALEXANDER: But not a fast food restaurant?

BRUCE EMBRY: Not a fast food restaurant. But there's not a burrito in sight of all these other locations.

CONSTANTINE ALEXANDER: If you need a burrito fix.

BRAD TOOTMAN: D'Angelo's is leaving as part of this project.

ATTORNEY BRUCE EMBRY: So there's, you know, essentially a one for one swap

there if you want to think of it that way, too.

TAD HEUER: So the foot long sandwich industry is going to be --

THOMAS SCOTT: So in that strip mall they're leaving the building?

ATTORNEY BRUCE EMBRY: So as you go back.

CONSTANTINE ALEXANDER: You're not primarily going to attract patrons to the walk-in trade. We don't have to deal with that.

ATTORNEY BRUCE EMBRY: No, we believe that virtually all of the customers will be driving. It is possible that there will be some walk-in in particular at lunchtime from the surrounding office buildings that are there. But primarily people will drive in, consume their meal, we believe, on-site primarily and then exit.

CONSTANTINE ALEXANDER: No

drive-in window?

ATTORNEY BRUCE EMBRY: No, not at all.

CONSTANTINE ALEXANDER: You're going to use biodegradable materials in packaging the food and then the utensils and other items provided?

ATTORNEY BRUCE EMBRY: Brad can certainly tell you all about that.

BRAD TOOTMAN: Yes. And actually that is what Chipolte is all about. We are -- it's one of our corporate philosophies, which is we are a green company. We're one of the only lead companies out there. We have a few lead certified restaurants in the country, and by doing that we actually use materials within our restaurants. We recycle all our cardboard. Recycle all the bottles. Actually, we separate our trash. But we're -- that's one of our -- we actually use no freezers. We don't have any

freezers in our restaurants. All our pork and chicken are naturally raised. And we actually do a class of cooking during the day which actually helps from not throwing out food. So we have -- we have trash containers all throughout the restaurant.

CONSTANTINE ALEXANDER: That's the next one. Off outside, too.

BRAD TOOTMAN: On the patio, too.

CONSTANTINE ALEXANDER: Let's go back to the traffic. Because you're fresh food all the time, what does that mean in deliveries in terms of traffic?

BRAD TOOTMAN: We actually have deliveries twice a week, and usually it's at night. We actually deliver at night. We actually -- our hours of operation are starting at eleven to ten p.m. So we don't have any morning business. But yet deliveries is all done by our consolidator. The only one that would actually be -- yeah, it would just be one

truck every two days, like twice a week.

CONSTANTINE ALEXANDER: And the truck would pull up to the front, there's no loading dock?

BRAD TOOTMAN: Actually they would -- yeah, they would pull up on the front of the building and roll out and they would be doing it at like midnight.

BRENDAN SULLIVAN: Where's the front?

BRAD TOOTMAN: It faces actually the parking lot.

BRENDAN SULLIVAN: CVS?

BRAD TOOTMAN: Yes. We have two entrances. One off of Alewife and the other one off of -- but the primary entrance that the restaurant is focussed is into the parking lot.

ATTORNEY BRUCE EMBRY: On the sort of the Wheeler Street side.

BRAD TOOTMAN: On the Wheeler Street towards CVS.

CONSTANTINE ALEXANDER: And you're going to comply with the legal requirements for handicapped and disabled persons? You're at ground level, there are no steps that go up?

ATTORNEY BRUCE EMBRY: That's correct.

BRAD TOOTMAN: And there's a handicap ramp right actually, right here. There's actually a few.

BRENDAN SULLIVAN: The initial tenant to that building -- what else is happening to the building, do you know?

BRAD TOOTMAN: Yes, I do. There's a bank that is actually going on the far right-hand side over towards the center. And a wireless T-Mobile is going there. Sleepy's is actually going on the other side. CVS --

CONSTANTINE ALEXANDER: Sleepy's is across the street in Fresh Pond.

BRAD TOOTMAN: Yeah.

CONSTANTINE ALEXANDER: They have both sides of the street now?

BRAD TOOTMAN: Yes, I believe so. They have a sign at least there. CVS and Trader Joe's.

CONSTANTINE ALEXANDER: Trader Joe's is moving in there?

BRAD TOOTMAN: That's what's being proposed. And that would be the chain.

ATTORNEY BRUCE EMBRY: And that's going to be the back in here.

BRAD TOOTMAN: Back in the back.

CONSTANTINE ALEXANDER: But it's going to use the parking -- Trader Joe's would need to use the parking spaces on the side?

BRAD TOOTMAN: Not in front of our space. But where D'Angelo's is and I believe it's the comic store?

BRENDAN SULLIVAN: Trader Joe's is going in where?

BRAD TOOTMAN: Over on this

corner.

BRENDAN SULLIVAN: Where Newberry is?

BRAD TOOTMAN: Newberry Comics and D'Angelo's.

BRENDAN SULLIVAN: And CVS is going?

BRAD TOOTMAN: Is actually going where they are.

CONSTANTINE ALEXANDER: I'm sorry, I'm a little confused. Trader Joe's is going to be in the building that's being built?

BRAD TOOTMAN: On the existing building.

BRENDAN SULLIVAN: So what happens to the liquor store? That's going away.

BRAD TOOTMAN: That's going away.

BRENDAN SULLIVAN: So that's going out. CVS is moving over?

BRAD TOOTMAN: Yes.

BRENDAN SULLIVAN: And Trader

Joe's is going to occupy where the pet supply and or the other one -- I don't know where they're going -- where Newberry Comics is.

BRAD TOOTMAN: Yeah. And I think I have a plan if you need it.

BRENDAN SULLIVAN: No. No. Just, what this is leading to is that, I'm a little concerned. First of all, I don't like where the building is. That's a whole other issue. That should have been pushed further away from the parkway and the way to the sidewalk. But it's built according to the ordinance.

I'm really concerned about signage. And that is we're starting to get a strip mall effect here. And that if you -- you know, if we allow one in, and then we have another one and then another one comes along, and then after a while we get the strip mall effect, which is I'm not sure -- what I'm going to like to see

along the very prominent side facing the parkway. So, and I know everybody is, again, is going to want signage. And I'm not sure how this complies with signage. And it's almost that I would like to see a master plan of this entire site. And I know it's not before us, because there are two huge signs. One enormous sign that has the CVS on it. Which is to me a light. It's an eye sore. But, again, I'm not trying to redesign this whole thing here. But it's -- urban planning would dictate a little more thought going into this thing. Because what we're getting is -- what did you say, little piece meal?

CONSTANTINE ALEXANDER: Plumbing, plumbing effect.

BRENDAN SULLIVAN: That we get a piece here and a piece here and a piece there. And then we look back two years from now and say oh, my God, what does this thing look like? It looks awful.

And at some point, we never had any controls on it.

Now, be that as it may. If you go to -- again, I'm not sure how they comply -- is the parkway overlay district which this building is in, and there is a whole bunch of things in that having to do with parking, having to do with planting, having to do with landscaping. On-grade open parking area shall be arranged and landscaped to properly screen cars from public way and pedestrian ways. Such screening shall consist of a fence or wall not less than 50 percent opaque and not more than four feet high. At least ten percent of the area devoted to on-grade parking shall be landscaped.

You know, it goes on and on and on. There's a whole bunch of things here. Trees and what have you.

Where are you going to have your trash removal?

BRAD TOOTMAN: Actually towards CVS.

BRENDAN SULLIVAN: I notice on this plan it shows here, dumpsters. Proposed dumpsters. In the overlay district it specifically says that no refuge storage area or mechanical equipment shall be located in the front yard within the district.

That is considered front yard.

BRAD TOOTMAN: Yeah. And this is where our trash is.

CONSTANTINE ALEXANDER: Where on this building are you going to be again?

BRAD TOOTMAN: We're actually right here. So we're actually using this.

BRENDAN SULLIVAN: So I guess what I'm leaning to, I see this plan here, which to me, I don't know if it's been reviewed or not. Now, again, I know you're the first guy in front of us, so you may be getting beaten up here. But

just to initiate the discussion, the Planning Board has reviewed this fast order food establishment Special Permit request and supports the use of this location in the newly constructed building that conforms to the parkway overlay district with the following reservations:

The plans for this establishment at the Harvard Square location were reviewed and approved by the Planning Board. However, the project fell short of the Board's expectation, in particular with regard to the outdoor seating that was not built in accordance with the approved plans. Therefore, the Planning Board recommends that the Board of Zoning Appeal grants the Special Permit, that the conditions be worded to make clear that the construction must be completely consistent with the approved plans.

CONSTANTINE ALEXANDER: We always do that.

BRENDAN SULLIVAN: I don't know what happened at Harvard Square.

BRAD TOOTMAN: Can I clarify that, because I had a conversation with Liza today. And I just clarified what happened there. That -- our outdoor patio is a seasonal, and it actually was being displayed during the season. It actually was put back into storage back in late October. And what it does, it adds on to it because the patio falls into the City of Cambridge properties. We actually have to take a, you know, a temporary permit out each season to cover that. So when you drive by there today, you're seeing exactly what it's built up to the property line, you're not seeing the expansion. And we are going to send her a note with the plan and picture showing that, what it's supposed to look like.

ATTORNEY BRUCE EMBRY: And in this location the area that accommodates the

seating is actually built out from the sidewalk. In other words, it's designed specifically to accommodate the seating.

CONSTANTINE ALEXANDER: I had a different issue but I'm going to let the Chairman keep going on this. I agree with you, Mr. Sullivan. But what are we -- I don't know how we get to what you want to do in the context of this petition.

BRENDAN SULLIVAN: Well, I'm not sure either. I haven't come up with that answer.

CONSTANTINE ALEXANDER: I certainly agree with your conception.

BRENDAN SULLIVAN: Again, what I'm leery of and very cautious is that we're just going to, you know, and everybody is going to come in and, you know, at some point we're going to say "Stop" or "No" and -- because it's starting to get --

CONSTANTINE ALEXANDER: But we have no -- assuming banks or other

commercial establishments are going in the rest of the building, there's no need for anybody to come back before us. They're only before us because they're a fast food enterprise. If they were another Ground Round Restaurant, they wouldn't even be before us at all.

BRENDAN SULLIVAN: I don't know. I mean, what is the signage? Does that comply with the signage?

BRAD TOOTMAN: It does. We're not looking for any variance for the signage.

ATTORNEY BRUCE EMBRY: The only -- it's just a use issue, not a building issue or a --

CONSTANTINE ALEXANDER: If the sign doesn't comply, you're going to have to come back before us.

ATTORNEY BRUCE EMBRY: If the sign doesn't comply, we're not going to be able to put it up.

CONSTANTINE ALEXANDER: Right.

ATTORNEY BRUCE EMBRY: We'll have either come back for more relief or put up a conforming sign. And I think we appreciate the concern about the coherence of the project as a whole. We're certainly a tenant in one of the spaces. We can't speak for the developer and how that coherence is going to be created or maintained. It's just our intention to run a restaurant in one of the spaces and our --

BRENDAN SULLIVAN: No, I know. You guys happen to be the first ones up in front of us, that's all. And I'm sort of venting my thoughts.

TAD HEUER: For the record.

CONSTANTINE ALEXANDER: Actually, don't come back before us seeking relief for a sign variation. That's a salami approach.

ATTORNEY BRUCE EMBRY: That wasn't the intention.

BRAD TOOTMAN: Yeah. And we're actually following -- we're not doing anything what's not approved by the Planning Board in the project. The landlord had provided us with the exact sign criteria that we're following.

CONSTANTINE ALEXANDER: My issue is parking.

TAD HEUER: Mine, too.

CONSTANTINE ALEXANDER: I mean, you're going to occupy roughly 2400 square feet in a 17,000 square foot building that's going to have all kinds of other commercial uses. All those pieces are going to require parking spaces. And your restaurant, which is not a walk-in trade by definition is also going to require a lot of parking. And are we going to be faced with a situation where when the last tenant comes in or the last tenants come into the building, they can't comply with the zoning requirement for parking because

it's been used up? You folks -- I'd like to see you try to come up with something that deals with parking.

BRENDAN SULLIVAN: Well, see that's what my initial thing was all about. We're being asked to look at this in a narrowly 28 feet wide or something like that. However, this is the beginning of the whole series of -- and I -- in a perfect world I would have been that this plan, was brought down not necessarily before us, but the Building Department obviously initially with calculations as to, you know, this is the building. Now, again, they're going to say we don't know what the tenants are so we don't know what our requirements are. And so it's like which comes first? But you're right, somebody -- the gate is going to shut on somebody at some point. And, again, I would have wished that they would have come up with a plan that addressed all of

those issues and showed the plan that was in compliance, counted up the number of spaces. Now they're going to say a lot of this stuff has been grandfathered in. And it's just -- it's too bad. I mean, the site is a very prominent site. Something nice could have happened there. And when they put up that building in that location, I said it's not, you know.

CONSTANTINE ALEXANDER: I think one thing we could do if the Board chose, if this was a regular restaurant, if this was another Ground Round, you would have to have six parking spaces for a 58 seat restaurant which is what you're proposing, and not have the complete freedom to have this parking. I wonder if we shouldn't -- and we have the right to do it -- impose, if we grant relief, a condition that the landlord give you six dedicated parking spaces for just Chipolte. That means those spaces are taken away from the rest

of the building, and as the rest of the building gets tenants in there, at least we'll know how they'll -- the owner would know, not you, would know how to handle parking.

BRENDAN SULLIVAN: Do you know what the requirements are?

CONSTANTINE ALEXANDER: Say again?

BRENDAN SULLIVAN: Do you know what the requirements are?

ATTORNEY BRUCE EMBRY: For the entire --

CONSTANTINE ALEXANDER: No, for the fast food enterprise there's no --

ATTORNEY BRUCE EMBRY: There's no specific parking --

CONSTANTINE ALEXANDER: However, there is a footnote which allows us by Special Permit to impose parking requirements. It's in section 6.36.50 this fast food entity. And that says none, but there's a footnote. Footnote 6.

And you go to footnote 6 and it says: The amount of parking required for this use, the fast food use, shall be at the discretion of the Special Permit granting authority. To make its determination to require parking, the Board shall consider the size of the staff customarily occupying the premises, the nature of the client, residents or customer population, and the extent to which additional off street parking will be detrimental to the physical character of the neighborhood.

So we do have the authority to provide in a parking point. Whether we want to exercise it, is something else. If you want to analogize this to a regular restaurant which is very close to, it's not a usual fast food enterprise. Again, if you look -- at the zoning law you have to have six parking spaces.

BRENDAN SULLIVAN: Now, is that based on --

CONSTANTINE ALEXANDER: Number of seats.

BRENDAN SULLIVAN: Number of seats?

CONSTANTINE ALEXANDER: Yes. One parking space for every ten seats. That's Section 6.36 point.

BRAD TOOTMAN: It's 50 plus 8. So 58 seats.

CONSTANTINE ALEXANDER: 58 seats.

ATTORNEY BRUCE EMBRY: That's counting the patio.

CONSTANTINE ALEXANDER: Counting the patio.

TAD HEUER: And the patio here would be Special Permit.

BRAD TOOTMAN: It's only seasonal.

ATTORNEY BRUCE EMBRY: It's only used during the season. It's permanent that it's built.

BRENDAN SULLIVAN: If you did catch a nice day, it's there for use 365

days of the year even though you would not use it.

BRAD TOOTMAN: We actually take our patio furniture away in the winter.

BRENDAN SULLIVAN: Well, I think we need to provide spaces for it.

CONSTANTINE ALEXANDER: That's a thought.

BRENDAN SULLIVAN: So the magic number is six. And I think that we're again going back to the fact that under 11.31 -- 11.31D: The establishment will attract a patron primarily from walk-in trade as opposed to driving and/or automobile related trade. However, should the Board specifically find that the district or area within which the establishment is proposed to be located, does not have significant pedestrian traffic, this requirement need not be met.

However, I think that under these circumstances that it might be prudent to

dedicate six spaces --

CONSTANTINE ALEXANDER: And then you have to get it from the landlord.

ATTORNEY BRUCE EMBRY: I was going to sort of lurch into at the moment, and that is -- the landlord and the tenant have an excellent relationship, but I don't know for the purpose of this meeting tonight that we can say that we can condition our application on a certain fixed number of parking spaces. What perhaps we might want to do is postpone the decision so that we can go back to the landlord, have the landlord agree with what we understand a requirement might be, and perhaps even show on a plan where those spaces would be located.

CONSTANTINE ALEXANDER: Would it help your dealings with the landlord, I just throw this out, if -- the other side, if we did grant you the Special Permit tonight subject to getting six dedicated

spaces, and then you go back to the landlord and say look, listen, the Zoning Board imposed this on us --

ATTORNEY BRUCE EMBRY: It's pretty much the same --

BRENDAN SULLIVAN: I think what Mr. Embry is saying, it's probably the right tact. He's going back to say the sense of the Board is....

CONSTANTINE ALEXANDER: Okay. That's fine.

ATTORNEY BRUCE EMBRY: Because if the landlord were to say, I can't do that. In which case we would then not be able to -- we would have failed the condition --

BRENDAN SULLIVAN: It puts them in a spot.

ATTORNEY BRUCE EMBRY: -- then we don't get our Special Permit even to serve the food. I think what we'd want to do is go back to the landlord, come back to you with a drawing and a commitment and say

this we can do, and have you all decide at that point. I think I would probably -- would that be better?

BRAD TOOTMAN: Yes.

ATTORNEY BRUCE EMBRY: And we can do that promptly.

TAD HEUER: Obviously, again, you being the first people in front of us, you're bearing the brunt of this. It's not you, it's here. It may be in your interest to convey to the landlord that the discussion we've had here about sequential tenants and sequential parking, that each tenant, such as yourself, may only require six spaces to ask you to conform with the footnote. But as tenants for a lot of people behoove them to take a look at who their tenants are going to be so that their fifth or final tenant doesn't come before us, and we tell them you may not occupy that space because you've run out of parking. It's not

obviously something you have to do, but it may be viable for them to perhaps even come to the next meeting with that in mind so that when we're addressing your specific concerns, they can hear from us the types of issues that their future potential clients may experience.

ATTORNEY BRUCE EMBRY: Well, I think your expression of your concerns is not wasted on us. We understand. We'll talk to the landlord representative --

BRENDAN SULLIVAN: 26-0 which is the parkway overlay district, they need to read that and make sure they're going to be able to comply with it. Or at some point they're going to sign in tenants and at some point we're going to say no, because -- so the discussion needs to be opened up and they need to be, you know, proactive on it.

ATTORNEY BRUCE EMBRY: When do we reschedule?

BRENDAN SULLIVAN: When is the time frame? February 16th.

MARIA PACHECO: The 4th we have four continued cases already.

BRENDAN SULLIVAN: What's on the regular agenda for the 12th?

MARIA PACHECO: We have four.

BRENDAN SULLIVAN: So we can go to the 16th?

CONSTANTINE ALEXANDER: 26th.

MARIA PACHECO: 12th or the 26th.

BRENDAN SULLIVAN: What did I write? 26th?

TAD HEUER: One consideration, Mr. Chairman, is that this is a case heard and we've just continued another case heard to the 12th. Would it be a good idea to try to consolidated those if at all possible?

MAHMOOD FIROUZBAKHT: It's a good idea.

MARIA PACHECO: We'll just

schedule less on the regular.

BRENDAN SULLIVAN: It makes perfect sense to me. Well, that should give you plenty of time. I mean it's a pretty basic conversation. It's pretty simple.

So I'll make a motion to continue this matter until February 12, 2009 at seven p.m. provided the petitioner provide further discussions with the property owner regarding some items, miscellaneous and sundry items, discussed with the Board.

On the condition that the petitioner sign a waiver to the statutory requirement for the decision to be rendered and that the posting signs -- the signing is still up there?

BRAD TOOTMAN: It's still there.

ATTORNEY BRUCE EMBRY: We think so.

BRAD TOOTMAN: It was there as of

yesterday. I don't think it's ever coming down.

BRENDAN SULLIVAN: I don't know if anybody's ever read it.

BRAD TOOTMAN: Did you see it?

BRENDAN SULLIVAN: It's there.

And that you change the posting sign to reflect the new date, February 12th and the time at seven p.m.

On the motion to continue.

(Show of hands.)

BRENDAN SULLIVAN: Five in favor.

(Sullivan, Alexander, Scott, Firouzbakht, Heuer).

BRENDAN SULLIVAN: Is there a second story to this building?

BRAD TOOTMAN: No.

BRENDAN SULLIVAN: There is not. So, it's just a single --

CONSTANTINE ALEXANDER: It's 17,000 square feet on one level.

BRAD TOOTMAN: Actually, if you

want to look, this is what it is.

BRENDAN SULLIVAN: What's the --

BRAD TOOTMAN: I actually have a layout. Linear, Linear Property.

BRENDAN SULLIVAN: And who are they?

BRAD TOOTMAN: They're actually out of Burlington.

This is actually how it will look.

TAD HEUER: Is your sign illuminated? I couldn't tell from the black and white.

BRAD TOOTMAN: It will actually be illuminated, yeah.

CONSTANTINE ALEXANDER: You're taking the one that's 2400 square feet?

BRAD TOOTMAN: That's correct. It will be T-Mobile, us, Sleepy's. They're still working with somebody. And then this is TD Banknorth.

CONSTANTINE ALEXANDER: That's the bank? It's going to be that big?

BRAD TOOTMAN: Yeah, the bank is going to be that big.

CONSTANTINE ALEXANDER: Wow. And this is the highway, Alewife Brook Parkway?

BRENDAN SULLIVAN: No, this is Wheeler Street.

CONSTANTINE ALEXANDER: Okay, got it.

ATTORNEY BRUCE EMBRY: This is the side.

BRAD TOOTMAN: This is how it will look. Don't look at the break down.

CONSTANTINE ALEXANDER: Yeah.

MAHMOOD FIROUZBAKHT: And signage will be put on --

BRAD TOOTMAN: On both sides.

MAHMOOD FIROUZBAKHT: On both sides.

BRENDAN SULLIVAN: Well, at some point they've got to trigger -- and also the lighting on it because we went through

that with Whole Foods. You know, so far the public and not being illuminated.

CONSTANTINE ALEXANDER: Whole Foods' sign illuminated, but we made them reduce the sign.

BRENDAN SULLIVAN: Just that they were over. But I'm not sure -- I don't think in this particular district the amount of signage on building is triggered. I think it is in Cambridge.

ATTORNEY BRUCE EMBRY: Raise the individual signage. I think it's an individual signage.

BRENDAN SULLIVAN: Not necessarily what's on the building? But anyhow. 26-0 is --

CONSTANTINE ALEXANDER: You got to pick up six parking spaces.

BRAD TOOTMAN: Thank you. Have a good night.

(Whereupon, a discussion was held off the record.)

CONSTANTINE ALEXANDER: You know, since we have a second, I think the cases for extension should be re-advertised. I don't think we should be signing these things in the dark of night. I mean, suppose the people moved into the neighborhood and they have an opinion. I mean, let's don't do it this time, but I really question the practice of not withdrawing the advertising of cases where the variance of the Special permit expires.

BRENDAN SULLIVAN: That's a good point.

CONSTANTINE ALEXANDER: It should be treated like a new case.

MAHMOOD FIROUZBAKHT: That has expired?

CONSTANTINE ALEXANDER: Yes.

MARIA PACHECO: That's not expired. That's why they're coming for an extension. Six months.

CONSTANTINE ALEXANDER: They should have taken action within six months. They haven't done it.

MAHMOOD FIROUZBAKHT: If they don't get an extension it will expire?

CONSTANTINE ALEXANDER: So, that's right.

MARIA PACHECO: This is the first extension. Their variance expires in January 25th, on January 25th.

CONSTANTINE ALEXANDER: But it will expire.

MARIA PACHECO: Right.

CONSTANTINE ALEXANDER: That's my feeling.

BRENDAN SULLIVAN: This is for Cantor, policeman who is going to put this enormous addition onto his house. And I suspect it's -- well, anyhow.

CONSTANTINE ALEXANDER: I think in the future --

BRENDAN SULLIVAN: You're probably

right.

(Discussion was held off the record.)

(9:35 P.M.)

(Sitting Members: Brendan Sullivan, Constantine Alexander, Thomas Scott, Mahmood Firouzbakht, Tad Heuer.)

BRENDAN SULLIVAN: Let me open up the case No. 9557, 69 Clarendon Avenue. There is a correspondence from Mr. Frederick Cantor and Evelyn Cantor.

Dear Chairman of the Board: We would like to request an extension of our variance which was granted last year. We kindly request this extension in order to further search for a contractor. Thank you in advance for your attention, Frederick Cantor.

MAHMOOD FIROUZBAKHT: Aren't contractors easier to find these days?

BRENDAN SULLIVAN: Contractors

are, financing probably is not I'm sure.

On the motion to grant the request for an extension of the decision until January -- until July 25, 2009. All those in favor.

(Show of hands).

(Sullivan, Alexander, Firouzbahkt, Scott, Heuer.)

BRENDAN SULLIVAN: I think you're probably right. And again, I dare say we can ask the Law Department, but we may not get an answer.

CONSTANTINE ALEXANDER: But the variance will expire before we get an answer.

MARIA PACHECO: It's one extension for six months.

MAHMOOD FIROUZBAKHT: At least the circumstances --

BRENDAN SULLIVAN: Well, at the very least possibly what should happen is that if people are applying for an

extension, that the property owners who were notified of the decision be notified that so and so has requested an extension. Which will then trigger some interest on a new person, say somebody moved in next-door. So they should probably -- and that the petitioner requesting the extension should pay -- I don't know, a filing fee.

CONSTANTINE ALEXANDER: What about re-advertise the case? Simply do that. Simply re-advertise it. Just like it's like a new case.

BRENDAN SULLIVAN: Yeah, I guess it's just a question of -- yeah, I don't know what mechanics are of getting on the docket or something like that. You have to be --

CONSTANTINE ALEXANDER: By definition they're not going to rush to build their --

BRENDAN SULLIVAN: Well, no, but

the thing is if this thing expires the end of January, and right now it's quick and dirty and done. If they were to file for an extension, say they know at month five that we're not going to meet this, and they come down and they say we need to re-file or something like that.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: Then the, it will have expired.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: So it wouldn't be in fact a new case in a sense. So is it a repetitive petition?

THOMAS SCOTT: You have to wait two years.

CONSTANTINE ALEXANDER: Fair point. Fair point.

BRENDAN SULLIVAN: You know, so I think at the very least it could be that the abutters notified that petitioner, which was granted a variance, has

requested an extension and we wish to comment or something like that, you can write to the Board or something like that. At least that puts them on notice.

CONSTANTINE ALEXANDER: Okay.

BRENDAN SULLIVAN: So, but then you'll have to charge I don't know what it cost to -- I mean, it's probably a minimal of \$100 to do it I think.

TAD HEUER: It doesn't seem unreasonable if you came knowing how long you've had to meet the budget --

BRENDAN SULLIVAN: Because from the time that they leave here, it's probably three months before they can really do anything anyhow. So they really should at that point go out and find somebody. So you've got three months and then you've got a year or six months from the time that you're granted a variance? It's one year, isn't it?

MARIA PACHECO: It's one year.

BRENDAN SULLIVAN: One year.

MARIA PACHECO: Special Permit two years.

BRENDAN SULLIVAN: So you've got basically a year and three months to do something. I'm sure it's financing. Or they probably have interviewed contractors and it's a number that they can't afford.

CONSTANTINE ALEXANDER: Right.

BRENDAN SULLIVAN: I suspect they'll probably be back with a reduced scope. What they're asking for is very large.

(Meeting adjourned at 9:40 p.m.)

C E R T I F I C A T E

**COMMONWEALTH OF MASSACHUSETTS
BRISTOL, SS.**

I, Catherine Lawson Zelinski, a
Certified Shorthand Reporter, the
undersigned Notary Public, certify that:

I am not related to any of the
parties in this matter by blood or
marriage and that I am in no way
interested in the outcome of this matter.

I further certify that the testimony
hereinbefore set forth is a true and
accurate transcription of my stenographic
notes to the best of my knowledge, skill
and ability.

IN WITNESS WHEREOF, I have hereunto
set my hand this 15th day of January 2009.

Catherine L. Zelinski
Notary Public
Certified Shorthand Reporter
License No. 147703

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